4024.

# SUPREME COURT OF THE UNITED STATES.

## No. 156.

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## JAMES A. STEWART AND AL., PLAINTIFFS IN ERROR,

vs.

## THE LESSEE OF PHILIP HICKEY AND AL.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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[GIDEON, Print.]

JOHN DOE ex dem. P. Hickey et al.
vs.
JAMES A. STEWART et al.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the city of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and fifty.

Be it remembered, that heretofore, to wit, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and district of Mississippi, at the November term thereof, in the year of our Lord one thousand eight hundred and thirty-eight, came John Doe, on the demise of Hickey et al., by Howell and Johnson, their attorneys, and brought into the said court their certain bill of a plea of trespass and ejectment against Richard Roe, with notice to James A. Stewart et al., which said declaration, notice thereon written, and marshal's return, is in the words and figures following, to wit:

Richard Roe was attached to answer John Doe, of a plea wherefore the said Richard, with force and arms, entered into the messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of the bayou Sarah creek, in the county of Wilkinson, State and district of Mississippi; which said two thousand acres of land, and the improvements thereon, Philip Hickey, Anna Hickey, wife of said Philip, William Wikoff, senior, Elizabeth, his wife, and Francis T. Duncan, heirs of James Mather, deceased, who are citizens of the State of Louisiana, had jointly and severally demised unto John Doe, for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did; and, therefore, the said John Doe, by his attorneys, complains, that, whereas heretofore, viz., on the first day of November, anno domini eighteen hundred and thirty, at the circuit and district aforesaid, Philip Hickey and Anna Hickey, his wife, William Wikoff, senior, Elizabeth, his wife, and Francis T. Duncan, heirs of James Mather, deceased, citizens of the State of Louisiana, had jointly and severally demised to the said John Doe two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying and being in the county of Wilkinson, State and district of Mississippi, on the waters of bayou Sarah creek, about six miles from Woodville, in a S. E. direction on both sides the road leading from Woodville to Pinckneyville, as described in the deed from James Mather to George Mather, dated April, 1803, and filed and recorded on 13th November, 1815, viz., in the circuit and district aforesaid; to have

and to hold the same unto the said John Doe and his assigns, from the said first day of November, in the year aforesaid, for and during the term of twenty years, then next ensuing, and fully to be complete and ended; and also for that whereas, heretofore, viz., on the first day of November, anno domini eighteen hundred and thirty, at the district aforesaid, Philip Hickey and Anna, his wife, William Wikoff, senior, and Elizabeth, his wife, and Francis T. Duncan, the said Anna, Elizabeth, and Francis being legal heirs of George Mather, deceased; all of whom are citizens of the State of Louisiana, had jointly and severally demised to the said John Doe two thousand acres of land, of a value exceeding two thousand dollars, together with the appurtenances, lying and being in the county of Wilkinson, State of Mississippi, district aforesaid; to have and to hold the same to the said John Doe and his assigns, from the first day of November, in the year eighteen hundred and thirty, for and during the term of twenty years then next ensuing, fully to be complete and ended.

And also for that whereas, heretofore, viz., on the first day of November, eighteen hundred and thirty-seven, at the district aforesaid, George Z. Mather, A. M. Tureaud, and Aurore, his wife, who was Aurore Mather, James Mather, Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather; the said George, Aurore, James, Alexander, Charles, Joseph, and Louisa, heirs of James Mather, junior, deceased, all of whom are citizens of the State of Louisiana, had jointly and severally demised to the said John Doe two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying and being in the county of Wilkinson, district and State aforesaid; to have and to hold the same unto the said John Doe and his assigns from the said first day of November, eighteen hundred and thirty-seven, for and during the term of twenty years next ensuing, and fully to be complete and ended. By virtue of which said several demises the said John Doe entered into the said messuage and two thousand acres of land of the value aforesaid, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the second day of November, in the year aforesaid, with force and arms, entered into the said messuage and the said two thousand acres of land, with the appurtenances, lying and being as aforesaid, in which the said John Doe was interested in the manner and for the term aforesaid, which are not yet expired, and ejected the said John Doe from his said term and farm then demised as aforesaid, and other wrongs to the said John Doe then and there did, to the great damage of the said Doe, and against the peace and dignity of the United States.

Wherefore the said Doe saith that he is injured, and hath sustained damage to the value of one thousand dollars, and therefore he brings suit.

HOWELL & JOHNSON, *for pl'ff.*

To Messrs. James A. Stewart, Thomas H. Prosser, John W. Leatherman, and Robert Morris, citizens of the State of Mississippi.

I am informed that you are in possession or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear at the ensuing term of the circuit court of the ninth circuit, Mississippi district, to be holden in the town of Jackson, Mississippi, in May next, by some attorney of said court; and then and there by rule of said court to cause yourselves to be made defendants in my stead; otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Dated this 29th December, eighteen hundred and thirty-seven.

Yours, &c.,

RICHARD ROE.

*Marshal's return.*

Benjamin F. Herbert is hereby specially deputized to execute the within process and make return of the same.

Given under my hand and seal this 17th January, 1838.

W. M. GWIN, [SEAL.]
*Marshal, Miss. district.*

Benjamin F. Herbert, being duly sworn, says: That he did, on the 6th day of February, 1838, deliver a copy of the within declaration and notice to James A. Stewart, and on the 9th of February, 1838, deliver a copy to John W. Leatherman, and on the 27th of February, 1838, deliver a copy to Thomas H. Prosser, and also a copy to Robert Morris.

B. F. HERBERT.

Sworn to and subscribed before me, this 10th day of March, 1838.

JOHN B. JONES, *Justice of the peace.*

Afterwards, to wit, at the term of the court last aforesaid, to wit, on the 8th day of June, in the year of our Lord one thousand eight hundred and thirty-eight, came as well the plaintiff by his attorney aforesaid, as the said Richard Roe, the casual ejector.

And it is ordered, by the consent of Howell & Johnson, for plaintiff, and Montgomery & Boyd, attorneys for defendants, that James A. Stewart, Thomas H. Prosser and Elizabeth, his wife, John W. Leatherman, and Mabry Morris, be made defendants, they being tenants in possession, in the stead of the now defendant Richard Roe, and do forthwith appear at the suit of the plaintiffs, and receive the declaration filed herein for the premises in question, so far as the same are in possession of said defendants respectively, or either of them, or their tenants, or any person claiming under their title, and shall forthwith plead thereto not guilty; and upon the trial of said issue shall confess

lease, entry, and ouster, and insist on their title only, otherwise judgment shall be entered by default against the now defendant Roe and if upon the trial of said cause the said defendant shall fail to make confession of said lease, entry, and ouster, whereby the plaintiff shall not be able to prosecute said suit further against said defendants, then no costs shall be allowed for not further prosecuting the same, but said defendants shall pay costs to said plaintiffs, to be taxed in that event by the clerk of the court; and if said plaintiffs shall not further prosecute his said action for any other cause than for not answering said lease, entry, and ouster, then they shall pay said defendants costs, in that case to be taxed by the same clerk.

MONTGOMERY & BOYD, *P. D.*

June 8th, 1838.

*Plea.*

And said defendants, James A. Stewart, Thomas H. Prosser and Elizabeth, his wife, John W. Leatherman, and Mabry Morris, came by their attorneys, Montgomery & Boyd, and defend the force and injury, when, &c., and say that they are not, nor is either of them, guilty of the supposed trespass and ejectment above laid to their charge, in manner and form as said John Doe on the demise aforesaid hath above thereof complained against them, and of this they put themselves on the country.

MONTGOMERY & BOYD, *P. D.*

And the plaintiffs do the like.

HOWELL & JOHNSON, *for plffs.*

And the cause was continued until the next term.

Afterwards, to wit, at a circuit court of the United States, held as aforesaid at the town of Jackson, in and for the southern district of Mississippi, on the sixth day of November, in the year of our Lord one thousand eight hundred and thirty-nine (until which term this cause was legally continued) came the plaintiff by his said attorneys, and suggest to the court that, since the last continuance of said cause, Thomas H. Prosser, one of the defendants in the stead of the casual ejector hath died, which is not denied but admitted to be true, and the cause is continued until the next term.

And afterwards, to wit, at the May term of the court aforesaid, A. D. 1845, to wit, on the 17th day of May, in the year of our Lord one thousand eight hundred and forty-five, came as well the said plaintiffs, by their said attorneys, as the surviving defendants, by their said attorneys; and, on motion, it is ordered that the continuance heretofore entered at this term be set aside, and the plaintiffs suggest the deaths of the defendants, Mabry Morris and John W. Leatherman, which is not denied, and writs of sci. fa. are awarded against George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen

Johnson and Margaret Johnson, his wife, Margaret S. A. Ayres, and Rebecca Graves, heirs at law of said Mabry Morris, deceased, also against Aminta Leatherman, widow of John W. Leatherman, deceased, Amelia Leatherman, John Leatherman, and Franklin Leatherman, heirs-at-law of said John W. Leatherman, deceased.

And afterwards, to wit, on the 25th day of August, 1847, the following writ of scire facias issued out of the clerk's office of the court aforesaid, which, with the marshal's return thereon, is in the words and figures, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, ss:*

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas John Doe, lessee of Philip Hickey and Anna Hickey, his wife, and Elizabeth Wikoff, and Francis T. Duncan, plaintiff, lately in our circuit court, held at Jackson, in and for the district aforesaid, brought his action of ejectment against James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, defendants; and whereas it having [been] shown to the court, that the said John W. Leatherman and Mabry Morris, defendants, in the action aforesaid, and before final judgment thereon, have departed this life, and that Aminta Leatherman is the widow and dowress of said Leatherman, deceased; and that Aurelia Leatherman, John Leatherman, and Franklin Leatherman, are heirs at law of the said John W. Leatherman, deceased; and that George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret Johnson, his wife, Margaret S. A. Ayres, and Rebecca Graves, are the heirs at law of said Mabry Morris, deceased, which information hath been received from the said John Doe, lessee, as aforesaid, plaintiff. Whereupon the said John Doe hath besought the court to grant him a proper remedy in that behalf, and the court being willing that what is right should be done in the premises, you are hereby commanded to make known to the said Aminta Leatherman, widow and doweress, as aforesaid, and to Aurelia Leatherman, John Leatherman, and Franklin Leatherman, heirs-at-law as aforesaid; and also to George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret Johnson, his wife, Margaret S. A. Ayres, and Rebecca Graves, heirs-at-law as aforesaid, that they be and appear before our said circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of November next, to shew cause, if any they can, why judgment should not be rendered against them in the action aforesaid, as widow and doweress and heirs-at-law as aforesaid, according to the form of the statute in such cases made and provided, if it shall seem expedient for them so do; and further to do and receive what our said court shall then and there consider in this behalf, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 1st Monday of March, A. D.
[L. S.] 1847, and in the 71st year of the independence of the United States.

Issued the 25th day of August, 1847.

W. H. BROWN, *Clerk*,
Per CHS. H. ROGERS, *D. C.*

*Marshal's return.*

Executed the 10th day of Sept., 1847, upon Aminta Leatherman, Aurelia Leatherman, John Leatherman, Franklin Leatherman, George Morris, Robert S. Morris, Green B. Morris, and Jefferson Morris, the other defendants named in sci. fa., Mahala Scott, Stephen Johnson, and his wife, Margaret Johnson, Margaret S. A. Ayres, and Rebecca Graves, are not to be found in my district, having removed to the State of Louisiana.

THOS. FLETCHER, *Marshal*,
Per P. FLETCHER, *D. M.*

And afterwards, to wit, at the November term, 1847, of said court, to wit, on the fourth day of November, in the year of our Lord one thousand eight hundred and forty-seven, on motion of the plaintiffs by their attorneys, leave is given them to amend narr., and then the cause was continued.

And afterwards, to wit, on the 8th day of Feb'y, 1848, the following alias writ of sci. fa. was issued, and, with the return thereon, is in the words and figures, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, ss:*

The President of the United States, to the marshal of the southern district of Mississipi, greeting:

Whereas John Doe, lessee of Philip Hickey, and Anna Hickey, his wife, and Elizabeth Wickoff and Francis T. Duncan, plaintiffs, lately in our circuit court, held at Jackson, in and for the district aforesaid, brought his action of ejectment against James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, defendants; and whereas it having been shown to the court that the said John W. Leatherman and Mabry Morris, defendants, in the action aforesaid, and before final judgment thereon, died; and that Aminta Leatherman is the widow and doweress of said Leatherman, dec'd; and that Aurelia Leatherman, John Leatherman, and Franklin Leatherman, are heirs-at-law of the said John W. Leatherman, dec'd; and that George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret Johnson, his wife, Margaret S. A. Ayers, and Rebecca Graves, are the heirs-at-law of said Mabry Morris, deceased; which information hath been received from the said John Doe, lessee as aforesaid, plaintiff; whereupon the

said John Doe hath besought the court to grant him a proper remedy in that behalf, and the court being willing that what is right should be done in the premises, you are hereby commanded to make known to the said Aminta Leatherman, widow and doweress as aforesaid, and to Aurelia Leatherman, John Leatherman, and Franklin Leatherman, heirs-at-law as aforesaid; and also to George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret Johnson, his wife, Margaret S. A. Ayres, and Rebecca Graves, heirs-at-law as aforesaid, that they be and appear before our said circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of May next, to show cause, if any they can, why judgment should not be rendered against them in the action aforesaid as widow and doweress, and heirs-at-law as aforesaid, according to the form of the statute in such cases made and provided, if it shall seem expedient for them so to do; and further to do and receive what our said court shall then and there consider in this behalf. And have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the 1st Mon-
[L. S.] day of Nov'r, A. D. 1847, and in the 72d year of the independence of the United States.

Issued the 8th day of July, 1848.

W. H. BROWN, *Clk.*,
Per CH'S H. ROGERS, *D. C.*

(Marshal's return.)

Mahala Scott, Stephen Johnson and Margaret, his wife, S. A. Ayres, and Rebecca Graves, are not to be found in my district.

THOMAS FLETCHER, *Ml.*
By P. FLETCHER, *D. M.*

And afterwards, to wit, on the 16th day of May, 1848, the plaintiffs, by their attorneys, filed the following amendment to the declaration herein, leave of the court being first had and obtained, as herein before stated, which amendment is in the words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,
*Southern district of Mississippi.*

JOHN DOE ex dem.
PHILIP HICKEY, al.
vs.
STEWART PROSSER, al.

*Amendment to Declaration.*

And also wherefore the said Richard Roe, with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of said creek, in the said county and district, which Philip Hickey and

Anna, his wife, William Wikoff, senior, and Eliza, his wife, and Francis S. Duncan, (the said Anna, Eliza, and Francis, heirs of James Mather, senior, deceased,) who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did.

And also wherefore the said Richard Roe, with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of said creek, in said county and district, which Philip Hickey and Anna, his wife, William Wikoff, senior, and Eliza, his wife, and Francis S. Duncan, (the said Anna, Eliza, and Francis, heirs of George Mather, senior, deceased,) who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did.

And also wherefore the said Richard Roe, with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of said creek, in said county and district, which George Z. Mather, A. M. Tureaud and Aurore, his wife, (who was Aurore Mather,) James Mather, Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather, (the said George, Aurore, James, Alexander, Charles, Joseph, and Louisa, heirs of George Mather, junior, deceased,) who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term of years which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did.

And also wherefore the said Richard Roe, with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of said creek in said county and district, which Philip Hickey and Anna, his wife, William Wikoff, senior, and Eliza, his wife, (the said Anna and Eliza, with Francis S. Duncan, deceased,) heirs of James Mather, senior, deceased; and Francis D. Conrad and Frances S. his wife, Alfred T. Conrad and Hannah, his wife, and Abner Duncan, (the said Francis S. Conrad, Hannah Conrad, and Abner Duncan, heirs of the said Francis S. Duncan, deceased,) who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term, which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did.

And also wherefore the said Richard R[illegible], with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and of the value of two thousand dollars, with the appurtenances, lying on the waters of said

creek, in said county and district, which Philip Hickey and Anna, his wife, William Wikoff, senr., and Eliza, his wife, (the said Anna and Eliza, with Francis S. Duncan, deceased, heirs of George Mather, senr., deceased,) Frederic D. Conrad and Francis S., his wife, Alfred T. Conrad and Hannah, his wife, and Abner Duncan, (the said Francis S. Conrad, Hannah Conrad, and Abner Duncan, heirs of said Francis S. Duncan, deceased,) who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe.

And also wherefore the said Richard Roe, with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of said creek, in said county and district, which George Z. Mather, A. M. Tureaud, and Aurore, his wife, (who was Aurore Mather,) Alexander Mather, Charles Mather, Joseph Mather, Louisa, (the said George Aurore, Alexander, Charles, Joseph, and Louisa, heirs, with James Mather, now deceased, of George Mather, junior, deceased,) and James Mather, son and heir of the said James Mather, deceased, who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term of years which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did.

And also wherefore the said Richard Roe, with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of said creek, in said county and district, which Philip Hickey and Anna, his wife, William Wikoff, senr., and Eliza, his wife, (the said Anna and Eliza, with Francis S. Duncan, deceased, heirs of James Mather, senior, deceased,) and Francis D. Conrad and Francis S., his wife, and Abner Duncan, (the said Francis S. Conrad and Abner Duncan, heirs of the said Francis S. Duncan, deceased,) who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did.

And wherefore, also, the said Richard Roe, with force and arms, entered into the other messuage and lands, improved and unimproved, containing two thousand acres, or thereabouts, and exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of said creek, in said county and district, which Philip Hickey and Anna, his wife, William Wickoff, senior, and Eliza, his wife, (the said Anna and Eliza, with Francis S. Duncan, deceased, heirs of George Mather, senior, deceased,) Frederic D. Conrad and Francis S., his wife, and Abner Duncan, (the said Francis S. Conrad and Abner Duncan, heirs

of the said Francis S. Duncan, deceased,) who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did.

And thereupon the said John Doe, by his attorneys, complains, that whereas the said Philip Hickey and Anna, his wife, William Wikoff, senior, and Eliza, his wife, and Francis S. Duncan, (which said Anna, Eliza, and Francis, were heirs, as aforesaid, of James Mather, senior,) and who were all citizens of the State of Louisiana, on the first day of November, in the year 1830, at said district, had jointly and severally demised to the said John Doe two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying in said county and district, on the waters of said creek, about six miles from Woodville, in a southeast direction on both sides of the road leading from Woodville to Pinckneyville, as described in the deed from James Mather to George Mather, dated April, 1803, and filed and recorded on 13th Nov'r, 1815, viz., in said district. To have and to hold the same unto the said John Doe and his assigns, from the said first day of November, in the year 1830, for and during the term of one hundred years then next ensuing and fully to be complete and ended. By virtue of which said last named demise, the said John Doe entered into the said last named messuage and two thousand acres of land, with the appurtenances, and became and was thereof possessed, for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the 2d day of November, in the year 1830, at said district, with force and arms, entered into the said last named messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested, in the manner and for the term aforesaid, which is not yet expired, and ejected him from his said last named farm.

And also that whereas, on the first day of November, in the year 1830, at said district, the said Philip Hickey and Anna, his wife, William Wikoff, senior, and Eliza, his wife, and Francis S. Duncan, (which said Anna, Eliza, and Francis, were heirs of said George Mather, senior, deceased, as aforesaid,) and who are citizens of the State of Louisiana, had jointly and severally demised to the said John Doe other two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying in said county and district, on the waters of said creek. To have and to hold the same unto the said John Doe and his assigns, from the said first day of November, in the year 1830, for and during the term of one hundred years then next ensuing, and fully to be complete and ended. By virtue of which said last named demise the said John Doe entered into the said last named messuage and two thousand acres of land, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on 2d day of November, in the year 1830, with force and arms, entered

into the said last named messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested in the manner and for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last named farm.

And also that whereas, on the first day of Nov'r, in the year 1837, at said district, George Z. Mather, A. M. Tureaud and Aurore, his wife, (who was Aurore Mather,) James Mather, Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather, (which said George, Aurore, James, Alexander, Charles, Joseph, and Louisa, were heirs of said George Mather, junior, deceased, as aforesaid,) and who are citizens of the State of Louisiana, had jointly and severally demised to the said John Doe other two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying in said county and district, on the waters of said creek; to have and to hold the same unto the said John Doe and his assigns, from the said first day of November, in the year 1837, for and during the term of one hundred years then next ensuing, and fully to be complete and ended; by virtue of which said last named demise the said John Doe entered into the said last named messuage and two thousand acres of land, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the 2d day of November, in the year 1837, at said district, with force and arms, entered into the said last name messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested in the manner and for the term last aforesaid, which is not yet expired, and ejected him, the said John Doe, from his said last named farm.

And also that whereas, on the first day of November, in the year 1837, at said district, the said Philip Hickey and Anna, his wife, William Wickoff, senior, and Eliza, his wife, (which said Anna and Eliza were, with Francis S. Duncan, deceased, *were* heirs of the said James Mather, deceased, as aforesaid,) Frederic D. Conrad and Francis S., his wife, Alfred T. Conrad and Hannah, his wife, and Abner Duncan, (which said Francis S. Conrad, Hannah Conrad, and Abner Duncan, were heirs of said Francis S. Duncan, deceased,) and who are all citizens of the State of Louisiana; had jointly and severally demised to the said John Doe other two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances lying in said county and district, on the waters of said creek; to have and to hold the same unto the said John Doe and his assigns, from the said first day of November, in the year 1837, for and during the term of one hundred years then next ensuing, and fully to be complete and ended; by virtue of which said last named demise the said John Doe entered into the said last named messuage of two thousand acres of land, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit,

on the 2d day of November, in the year 1837, at said district, with force and arms, entered into the said last named messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested in the manner and for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last named farm.

And also that whereas, on the first day of November, in the year 1837, at said district, the said Philip Hickey and Anna, his wife, William Wickoff, senior, and Eliza, his wife, (which said Anna and Eliza, with Francis S. Duncan, deceased, were heirs of the said George Mather, senior, deceased, as aforesaid,) Frederic D. Conrad and Francis S., his wife, Alfred T. Conrad and Hannah, his wife, and Abner Duncan, (which said Francis S. Conrad, Hannah Conrad, and Abner Duncan, were heirs of said Francis S. Duncan, deceased,) and who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe other two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying in said county and district, on the waters of said creek; to have and to hold the same unto the said John Doe and his assigns, from the said first day of November, in the year 1837, for and during the term of one hundred years then next ensuing, and fully to be complete and ended.

By virtue of which said last named demise the said John Doe entered into the said last named messuage and two thousand acres of land, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the 2d day of November, in the year 1837, at said district, with force and arms, entered into the said last named messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested in the manner and for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last named farm.

And also that whereas, on the first day of November, in the year 1837, at said district, the said George Z. Mather, A. M. Tureaud and Aurore, his wife, (who was Aurore Mather,) Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather, (which said George, Aurore, Alexander, Charles, Joseph, and Louisa, with James Mather, deceased, were heirs of said George Mather, junior, deceased,) and James Mather, son and heir of said James Mather, deceased, and who are citizens of the State of Louisiana, had jointly and severally demised to the said John Doe other two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying in said county and district, on the waters of said creek, to have and to hold the same unto the said John Doe and his assigns from the said first day of November, in the year 1837, for and during the term of one hundred years then next ensuing, and fully to be complete and ended. By virtue of which said last named demise the said John Doe entered

into the said last named messuage and two thousand acres of land, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the 2d day of November, in the year 1837, at said district, with force and arms, entered into the said last named messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested in the manner and for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last named farm.

And also that, whereas, on the first day of November, in the year 1837, at said district, the said Philip Hickey and Anna, his wife, William Wikoff, senior, and Eliza, his wife, (which said Anna and Eliza were, with Francis S. Duncan, deceased, heirs of James Mather, senior, deceased,) and Frederic D. Conrad and Francis S., his wife, and Abner Duncan, (which said Francis S. Conrad and Abner Duncan were heirs-at-law of the said Francis S. Duncan, deceased,) and who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe other two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying in said county and district, on the waters of said creek; to have and to hold the same unto the said John Doe and his assigns from the said first day of November, in the year 1837, for and during the term of one hundred years then next ensuing, and fully to be complete and ended. By virtue of which said last named demise the said John Doe entered into the said last named messuage and two thousand acres of land, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the 2d day of November, in the year 1837, at said district, with force and arms, entered into the said last named messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested in the manner and for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last named farm.

And also that whereas, on the first day of November, in the year 1837, at said district, the said Philip Hickey and Anna, his wife, William Wikoff, senior, and Eliza, his wife, (which said Anna and Eliza were, with Francis S. Duncan, deceased, heirs of George Mather, sen., deceased,) Frederick D. Conrad and Francis S., his wife, and Abner Duncan, (which said Francis S. Conrad and Abner Duncan were heirs of said Francis S. Duncan, deceased,) and who are all citizens of the State of Louisiana, had jointly and severally demised to the said John Doe other two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying in said county and district, on the waters of said creek; to have and to hold the same unto the said John Doe and his assigns, from the said first day of November, in the year 1837, for and during the term of one hundred years then

next ensuing, and fully to be complete and ended. By virtue of which said last named demise the said John Doe entered into the said last named messuage and two thousand acres of land, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as last aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the 2d day of November, in the year 1837, at said district, with force and arms, entered into the said last named messuage and two thousand acres of land, with the appurtenances, in which the said John Doe was interested, in the manner, and for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last named farm, to the great damage of the said John Doe; wherefore the said John Doe saith he is injured, and hath sustained damage to the value of one thousand dollars, and therefore he brings suit, &c.

HOWELL & JOHNSON,
*Atty's for plaintiffs.*

And afterwards, to wit, on the 28th day of July, 1848, the following pluries writ of scire facias issued, and, with the return thereon, is in the words and figures, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, circuit court, U. S.*

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas John Doe, lessee of Philip Hickey and Anna Hickey, his wife, and Elizabeth Wikoff, and Francis S. Duncan, plaintiff, lately in our circuit court, held at Jackson, in and for the district aforesaid, brought his action of ejectment against James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, defendants; and whereas it having been shown to the court that the said John W. Leatherman and Mabry Morris, defendants in the action aforesaid, and before final judgment thereon, died, and that Aminta Leatherman is the widow and doweress of said Leatherman, deceased; and that Aurelia Leatherman, John Leatherman, and Franklin Leatherman, are the heirs-at-law of the said John W. Leatherman, deceased; and that George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret, his wife, Margaret S. A. Ayres, and Rebecca Graves, are the heirs-at-law of said Mabry Morriss, dec'd; which information hath been received from the said John Doe, lessee, as aforesaid, plaintiff; whereupon the said John Doe hath besought the court to grant him a proper remedy in this behalf, and the court being willing that what is right should be done in the premises, you are hereby commanded to make known to the said Aminta Leatherman, widow and doweress, as aforesaid, and to Aurelia Leatherman, John Leatherman, and Franklin Leatherman, heirs-at-law as aforesaid, and also to George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Marga-

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ret, his wife, Margaret S. A. Ayres, and Rebecca Graves, heirs-at-law as aforesaid, that they be and appear before our said circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of November next, to show cause, if any they can, why judgment should not be rendered against them in the action aforesaid, as widow and doweress and heirs-at-law as aforesaid, according to the form of the statute in such case made and provided, if it shall seem expedient for them so to do; and further to do and receive what our said court shall then and there consider in this behalf, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] May, A. D. 1848, and in the 72d year of the independence of the United States of America.

Issued the 28th day of July, A. D. 1848.

W. H. BROWN, *Clk.*,
Pr. CHS. H. ROGERS, *D. C.*

(Marshal's return.) "Mahala Scott, Stephen Johnson, Margaret, his wife, Margaret S. A. Ayres, and Rebecca Graves, they nor either of them, are not found in my district.

THOS. FLETCHER, *Marshal*,
By P. FLETCHER, *D. M.*

And afterwards, to wit, at the November term, A. D. 1848, of said court, to wit, on the 7th day of November, in the year of our Lord one thousand eight hundred and forty-eight, it is suggested to the court, that since the institution of this suit Alexander Mather, one of the plaintiff's lessors herein, hath departed this life; and leave is given plaintiffs to amend their declaration, and ninety days are allowed them to file said amendment, and thereupon the cause was continued.

And afterwards, to wit, on the 11th day of June, 1849, the following als. plus. writ of scire facias issued, which, with the return thereon, is in the words and figures, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, circuit court, U. S.*

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas John Doe, lessee of Philip Hickey and Anna Hickey, his wife, and Elizabeth Wykoff and Francis T. Duncan, plaintiff, lately in our circuit court, held at Jackson, in and for the district aforesaid, brought his action of ejectment against James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, defendants; and whereas it having been shown to the court that the said John W. Leatherman and Mabry Morris, defendants in the action aforesaid, and before final judgment thereon, died; and that Aminta Leatherman is the widow and doweress of the said Leatherman, deceased, and that Aurelia

Leatherman, John Leatherman, and Franklin Leatherman, are the heirs-at-law of the said John W. Leatherman, deceased; and that George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret, his wife, Margaret S. A. Ayres, and Rebecca Graves, are the heirs-at-law of the said Mabry Morris, deceased; which information hath been received from the said John Doe, lessee as aforesaid, plaintiff. Whereupon, the said John Doe hath besought the court to grant him a proper remedy in this behalf, and the court being willing that what is right should be done in the premises, you are hereby commanded to make known to the said Aminta Leatherman, widow and doweress as aforesaid, and to Aurelia Leatherman, John Leatherman, and Franklin Leatherman, heirs-at-law as aforesaid, and also to George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret, his wife, Margaret S. A. Ayres, and Rebecca Graves, heirs-at-law as aforesaid, that they be and appear before our said circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of November next, to show cause, if any they can, why judgment should not be rendered against them in the action aforesaid, as widow and doweress and heirs-at-law as aforesaid, according to the force, form, and effect of the statute in such case made and provided, if it shall seem expedient for them so to do. And further to do and receive what our said court shall then and there consider concerning them in this behalf, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. s.] May, A. D. 1849, and in the 73d year of the independence of the United States.

Issued the 11th day of June, A. D. 1849.

W. H. BROWN, *Clerk*,
Per CHAS. H. ROGERS, *D. C.*

*Marshal's return.*

Not found in my district.

THOMAS FLETCHER, *Marshal*,
By P. FLETCHER, *D. marshal.*

And afterwards, to wit, on the 14th November, 1849, the following writ of 3d pluries scire facias issued, which, with the return thereon, is in the words and figures, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, circuit court, U. S.*

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas John Doe, lessee of Philip Hickey and Anna Hickey, his wife, and Elizabeth Wykoff and Francis T. Duncan, plaintiff, lately, in our circuit court, held at Jackson, in and for the district aforesaid,

brought his action of ejectment against James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, defendants; and whereas it having been shown to the court that the said John W. Leatherman and Mabry Morris, defendants in the action aforesaid, and before final judgment thereon, died; and that Aminta Leatherman is the widow and doweress of the said Leatherman, deceased; and that Aurelia Leatherman, John Leatherman, and Franklin Leatherman, are the heirs-at-law of the said John Leatherman, deceased; and that George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mehala Scott, Stephen Johnson and Margaret, his wife, Margaret S. A. Ayres, and Rebecca Graves, are the heirs-at-law of the said Mabry Morris, deceased; which information hath been received from the said John Doe, lessee as aforesaid, plaintiff; whereupon the said John Doe hath besought the court to grant him a proper remedy in this behalf, and the court being willing that what is right should be done in the premises, you are therefore hereby again commanded, as before you were commanded, to make known to, and summon the said Aminta Leatherman, widow and doweress as aforesaid, and the said Aurelia Leatherman, John Leatherman, and Franklin Leatherman, heirs-at-law as aforesaid, and also the said George Morris, Robert S. Morris, Green B. Morris, Jefferson M. Morris, Mahala Scott, Stephen Johnson and Margaret, his wife, Margaret S. A. Ayres, and Rebecca Graves, heirs-at-law as aforesaid, that they be and appear before our said circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of May next, to show cause, if any they can, why judgment should not be rendered against them, the widow and doweress, and heirs-at-law as aforesaid, according to the force, form, and effect of the statute in such case made and provided, if it shall seem expedient for them so to do; and further to do and receive what our said court shall then and there consider concerning them in this behalf; and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of
[L. S.] November, A. D. 1849, and in the 74th year of the independence of the United States.

Issued the 14th day of November, A. D. 1849.

W. H. BROWN, *Clerk*,
Per CHAS. H. ROGERS, *D. C.*

*Marshal's return.*

The defendants to be served upon are not to be found in my district.

THOMAS FLETCHER, *Marshal*,
By P. FLETCHER, *D. marshal.*

UNITED STATES OF AMERICA,
*Southern district of Mississippi.*

Circuit court, 9th circuit, May term, 1850.

Be it remembered, that, on the trial of the above entitled cause, the

plaintiffs read in evidence to the jury a copy of the plat and certificate of survey, and the patent from the Spanish Government, dated 3d April, 1794, covering the lands in suit, as follows, to wit:

*Written evidence of notice, No.* 1782.

Spanish Government to Don Santiago Mather.

Registered March 31st, 1804. Patent for 2000 arpents.

Louisiana, 1794. Distrito de Natchez.

[For plat see original, page 28.]

Don Carlos Trudeau, agrimensor real y particular de la provincia de la Louisiana.

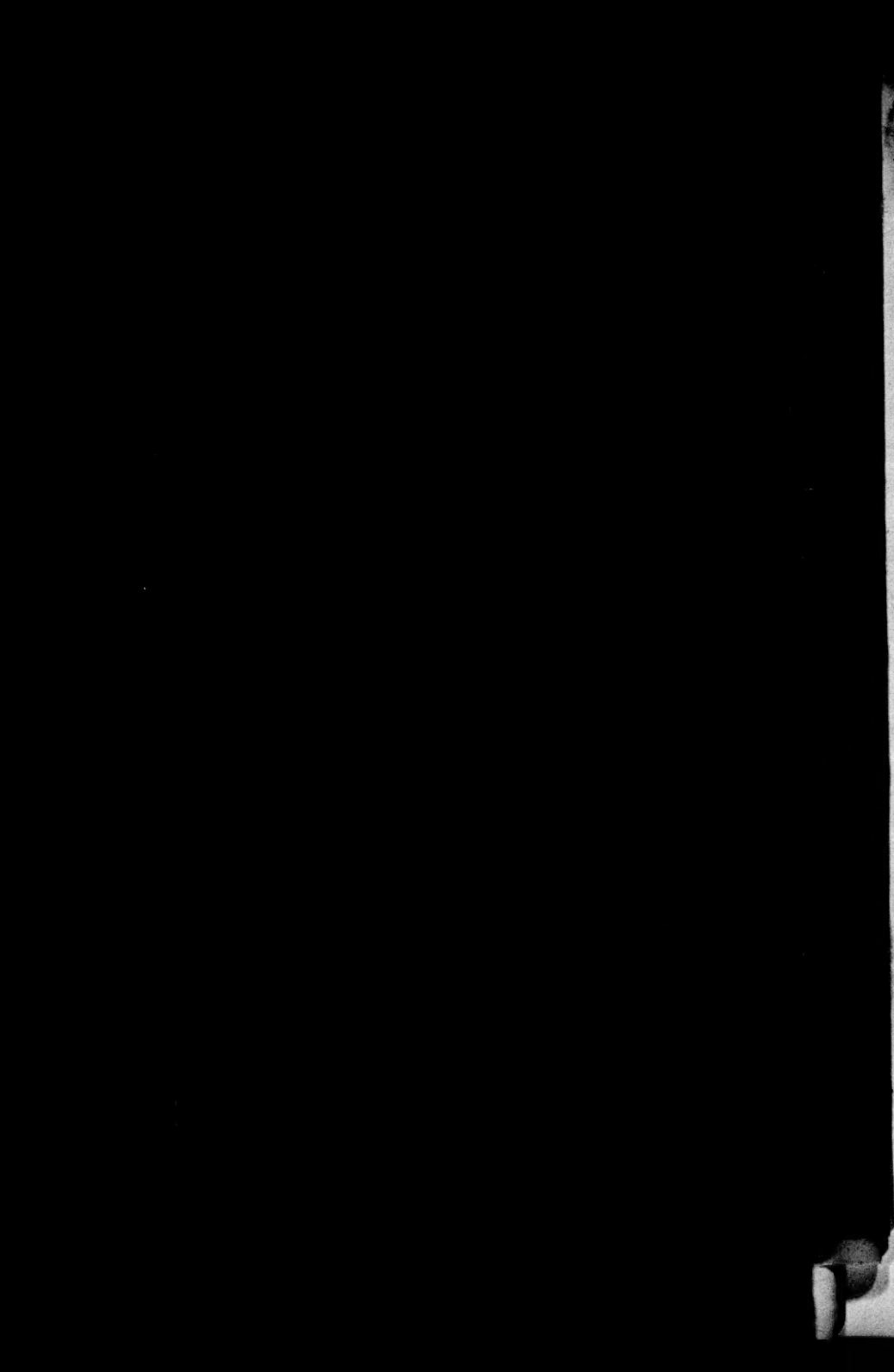
Certifico, que ha sido medido y lindado a favor de Don Santiago Mather, un terreno de dos milas arpanes de tierra quadrados de superfine, medidos con la percha de la ciudad de Paris de dies y ocho pies de roy de largo, segun el uso y costumbre desta colonia, cuyo terreno situado en el distrito de Natchez, a como quarenta milas al sud este del fuerte Panmure, lindando de un lado con terreno de Ezequiel Forman, y a los demas lados con terrenos vacantes y del dominio de S. M.; los limites son paralelos, derigidos norte ochenta y dos grados este, con sud ocho grados este, de la bruxula sin attender a la variacion; en aquellos limites fueron senalados para linderos los arboles y mojones figurados en el plano; el apeo aviendo sido practicado en conformidad del decreto de su sen'r, el sen'r gov'r gen'l, &c.

Con fecha del dia siete del mes de Febrero del año ultimo passado y para que conste doy la presenta certificacion con el plano figurativo que acompaña, formada en conformidad del apeo del dia veinte del mes de Julio del anted'o año, de lo que doy fe. Avril dos de mil setecientos noventa y quatro año.

CARLOS TRUDEAU, *Ag. Rl.*

Dn. Francisco Luis Hector, Baron de Carondelet, caballero de la religion de San Juan, coronel de los reales e'tos, gobernador intendente g'ral, y vice patrono de las provincias de la Louisiana, Florida occidental, inspector de las tropas veteranas y milicias de ellas, &c.

Vistas las antecedentes diligencias practicadas por el agrimensor de esta provincia, Dn. Carlos Trudeau, sobre la posession que ha dado a Dn. Santiago Mather de la cantidad de dos mil arpanes de tierra quadrados situados en el distrito de Natchez, a como quarenta millas al sud este del fuerte Panmure, de dho. puesto, lindando de un lado con tierras pertenecientes a Esechiel Forman, y los demos lados con terrenos vacantes y del dominio de S. M., como le demuestra el plano figurativo que antecede, y reconociendo estar reglados al orden de agrimensura y a



la concesion del antedho. circumvecino, sin que a este se le case se paymen alguno, ni que lo hayan reclamado y se bien consentido segun justifica su asistencia a dhas. operaciones, aprodandolas como las aprobamos, usando de la facultad que el rey nos tiene concedida, otorgamos en su real nombre al suso dicho Don Santiago Mather, los expresados dos arpanes de tierra quadrados, para que como suyos propias disponga de ellas y los usufrute, reglandose a las mencionadas diligencias, y observando las condiciones provenidos en el reglamento del asunto.

Dado el presento, firmado de mi mano, sellado con el sello de mas armas, refrendado por el infrascrito secretario por S. M. de este gobierno e intendencia, en la ciudad de la Nueva Orleans, a tres de Abril, de mil setecientos noventa y quatro.

EL BARON CARONDELET.

[SEAL] Por mandado de su s'ria,

ANDRES LOPEZ ARMESTO.

Registrado.

LAND OFFICE, *Washington, Mississippi.*

I hereby certify, that the foregoing written evidence of notice, No. 1782, is truly copied from the record in this office.

Given under my hand, the 6th August, 1839.

THO. W. NEWMAN,
*Register of the land office.*

*Written evidence of notice, No.* 1782.

Spanish Government to Don Santiago Mather.

Registered March 31st, 1804. Patent for 2000 arpents.

LOUISIANA, year 1794. *Natchez district.*

[For plat see original, p. 31.]

Mr. Charles Trudeau, royal and special surveyor for the province of Louisiana.

I certify, that there has been measured and bounded in favor of Mr. James Mather, a tract of two thousand arpens of land, superficial measurement, measured with the perch of the city of Paris, of eighteen feet (royal) in length, in accordance with the use and custom of this colony; which land is situated in the district of Natchez, about forty miles S. E. of fort Panmure, bounded on one side by lands of Ezekiel Forman, and on the remaining sides by vacant lands of his majesty's domain; the limits are parallel, directed north, eighty-two degrees east, by south eight degrees west, as indicated by the compass without regard to the variation of the needle; at those limits the trees and posts were marked to designate the boundaries as figured in the plan,

the survey having been executed in conformity with the decree of his excellency, the governor gen'l, &c., dated the seventh of February of the past year; and in witness whereof I grant the present certificate, with the figurative plan accompanying it, drawn conformably to the survey made on the twentieth of July of the aforesaid year, to all of which I give faith. April 2d, 1794.

CHARLES TRUDEAU,
*Royal surveyor.*

Don Francisco Louis Hector, baron of Carondelet, knight of the religious order of St. John, colonel in the royal armies, governor general, &c., &c., &c.

Having seen the foregoing despatches executed by the surveyor for this province, Don Carlos Trudeau, relative to the possession he has given to Don Santiago Mather, of the quantity of two thousand square arpens of land, situated in the district of Natchez, about forty miles southeast of fort Panmure, bounded on one side by lands belonging to Ezekiel Foreman, and on the other side by vacant lands of his majesty's domain, as demonstrated in the foregoing figurative plan, and recognising it to be regulated by the rules of surveying, and by the grant made to the neighbor aforesaid, he not having suffered thereby, but consenting thereunto, as is proven by his assisting in said operations, approving as we approve of them.

Exercising the prerogative granted to us by the king, we confirm to the above named Mr. James Mather the said two thousand arpens of land, that as his own he may dispose of and enjoy them, being governed by the aforesaid despatches, and observing the conditions provided in such cases.

The present is given, signed with my hand, sealed with my armorial seal, and countersigned by the secretary for H. M. government and intendency, in the city of New Orleans, this 3d day of April, 1794.

EL BARON DE CARONDELET.

[SEAL.] By order of his Lordship,

ANDRES LOPEZ ARMESTO.

N. B. The words Don Santiago have been erased, and Mr. James substituted or interlined before signing.

STATE OF MISSISSIPPI,
*Adams county.*

Before me personally appeared, Timothy White to me well known, who being sworn, says, that the foregoing writing, with the plat beginning at the words "written evidence," and ending with the name "Andres Lopez Armesto," is a true and faithful copy and translation of the Spanish patent or instrument of writing, marked A, hereto annexed.

TIMOTHY WHITE.

Sworn to and subscribed this twentieth day of April, 1840.

L. PITCHER. [SEAL.]

*Commissioner of the circuit court of the United States, Southern district of Mississippi.*

They then read to the jury the certificate of confirmation, as follows:

*A, No.* 763—*Registers, No.* 1,782.

MISSISSIPPI TERRITORY.

Board of commissioners west of Pearl river, established by a law of Congress regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee.

George Mather claims a tract of two thousand arpens of land situate in Wilkinson county, on the waters of the bayou Sara, by virtue of a grant under the authority of the Spanish government to James Mather, bearing date the third day of April, in the year one thousand seven hundred and ninety-four, having such shape, form, and marks, both natural and artificial, as are represented in the plat annexed to said grant, and legally conveyed to the claimant.

We do certify, that the said George Mather is confirmed in his title thereto, by virtue of the articles of agreement and cession between the United States and the State of Georgia.

Given under our hands at the town of Washington, in the county of Adams, this tenth day of April, in the year one thousand eight hundred and six, and in the thirtieth year of the independence of the United States.

THOMAS RODNEY,
ROBERT WILLIAMS,
THOS. H. WILLIAMS,
*Commissioners.*

Attest: PARKE WALTON,
*Clerk of the Board.*

LAND OFFICE, *Washington, Mississippi.*

I hereby certify, that the within certificate is truly copied from the record in this office.

Given under my hand the 6th August, 1839.

THOS. W. NEWMAN,
*Register of the land office.*

And the copy of the deed from James Mather to George Mather, as follows:

*James Mather to George Mather.—Deed of conveyance.*

This indenture, made the twenty-sixth day of April, in the year of

our Lord one thousand eight hundred and three, between James Mather, a native subject of the king of Great Britain, but now residing in the province of Louisiana, of the one part, and George Mather, brother of the said James Mather, now residing in the province aforesaid, of the other part, witnesseth: That the said James Mather, for and in consideration of the sum of ten thousand dollars, to him and before the ensealing and delivering hereof in hand well and truly paid, the receipt whereof he doth hereby acknowledge, and thereof acquits, releases, exonerates, and forever discharges the said George Mather, his heirs, executors, and administrators, by these presents, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said George Mather, and to his heirs and assigns, all that tract or parcel of land containing two thousand acres, French measure, situate, lying, and being in the county of Wilkinson, in the Mississippi territory of the United States, granted to the said James Mather by letters patent bearing date the third day of April, in the year of our Lord one thousand seven hundred and ninety-four, under the hand and seal of the Baron de Carondelet, then governor of the province of Louisiana, and bounded at the time of the survey by lands of Ezekiel Forman on the north, and on other sides by lands then vacant, as by the said letters patent, reference being thereunto had, will more fully and at large appear; together with all and singular other the houses, out-houses, buildings, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining; to have and to hold the said tract or parcel of two thousand acres of land, hereditaments, and premises, hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said George Mather, his heirs and assigns, to the only proper use and behoof of the said George Mather, his heirs and assigns forever.

And the said James Mather, for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree, to and with the said George Mather, his heirs and assigns, by these presents, that he, the said James Mather, and his heirs, the said above mentioned and described tract or parcel of two thousand acres of land, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said George Mather, his heirs and assigns, against him, the said James Mather, and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim the same, by, through, from, or under him, them, or any of them, shall and will warrant and forever defend by these presents. And further, that he, the said James Mather, and his heirs, and all and every other person or persons lawfully claiming or to claim by, from, or under him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the reasonable request and at the proper cost and charges in the law of the said George Mather, his heirs and assigns, make, do, and execute, or cause and produce to be made, done, and executed, all and every such further and other lawful and

reasonable act or acts, deed or deeds, device and devices, in the law whatsoever, for the further, better, more perfect, and absolute assurance and confirmation of the said tract or parcel of two thousand acres of land, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said George Mather, his heirs and assigns, as by him or them, or by his or their counsel learned in the law, shall be reasonably advised or required.

In witness whereof the said James Mather has hereunto set his hand and seal on the day and year first above written.

JAMES MATHER. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. SURGET,
NATHAN MORIAM.

MISSISSIPPI TERRITORY,
*County of Wilkinson, ss:*

Before the undersigned, one of the justices of the county court of the county aforesaid, came Charles Surget, one of the subscribing witnesses to the within indenture, and made oath that he saw James Mather, the within named grantor, sign, seal, and deliver said indenture as his free and voluntary act and deed for the purposes therein mentioned; and that he, the said Charles Surget, subscribed his name as a witness of the execution of said indenture in presence of said grantor.

Given under my hand the twenty-seventh day of July, in the year of our Lord eighteen hundred and three.

HUGH DAVIS, *Justice of the Peace.*

I, Thomas W. Newman, register of the land office at Washington, Mississippi, do hereby certify, that the foregoing deed of conveyance from James Mather to George Mather is truly copied from the records of this office.

Given under my hand this 23d day of March, 1840.

THO. W. NEWMAN,
*Register of the land office.*

They then read the agreement of counsel to the jury, entered into before the declaration was amended, as follows:

DOE on demise of Hickey and others
vs.
STEWART, Prosser, Lewis, and so forth.

United States of America, southern district of Mississippi, circuit court, for ninth judicial circuit.

It is agreed between the counsel in the above action:

1st. That plaintiffs are heirs of James Mather, and that whatever title he had at his death vested in them, (or any others,) his heirs to be shewn.

2d. That defendants are possessed of the title of Stark's heirs to the premises.

3d. That all legally certified copies of title papers be admitted in lieu of the originals, subject to the objections to which the originals would be subject; and that sworn translations of Spanish grants be admitted in evidence, subject to the same objections as the originals, and to any objections on account of the translations being defective.

4th. That the defendants are in possession of the lands, &c., in controversy, and were so at the time this suit was brought, under derivative title from Robert Stark's heirs, valied so far as Stark's title was valid.

5th. That the name of N. Hickey be stricken out of plaintiffs' declaration, and that the word "senior" be inserted in lieu of the word "junior" after the name of W. Wikoff.

G. WINCHESTER,
*For defendants.*
HOWELL & JOHNSTON.

They then read to the jury the deposition of Morgan and Tesseir, as follows:

DOE on demise of Hickey, Wikoff, Duncan, and al.,
vs.
STEWART, Prosser, Leatherman, and Morris, and al.
} Ejectment.

Circuit court, ninth judicial circuit, southern district of Mississippi.

The undersigned, counsel in the above cause, agree that D. D. Avery, esquire, of Baton Rouge, shall examine the honorable Charles Tessier and Thomas G. Morgan, witnesses on behalf of plaintiffs in the above cause, and reduce to writing the answers of the said witnesses to the following interrogatories and cross interrogatories, the said Tessier and the said Morgan being duly sworn thereto; and that the said questions and answers shall be read in evidence, the same being certified by the said D. D. Avery, esqr., to have been taken in pursuance of this agreement; the said questions and answers to be subject only to legal objections.

WINCHESTER,
S. S. BOYD,
HOWELL & JOHNSTON.

*Questions by plaintiffs' counsel.*

1st. Were you acquainted with George Mather, senior; if so, at what time did he die; and with James Mather; and when did he die?

2d question. Were you or not intimate with the family of the Mathers? If so, state who were the heirs of said George Mather, senior.

3d question. Did you ever hear from the members of the family, or

any of them, deceased, or now living, who George Mather, senior's, heirs were, and whether he died without issue?

4th question. Look on paper marked "A," and say whether the signature thereto is in the handwriting of George Mather, junior? (4th question withdrawn.)

*Cross interrogatories.*

1st. When did you first become acquainted with George Mather, senior, and in what parish did he reside previous to and up to the time of his death?

2d. If you state who were heirs in answer to plaintiffs' second interrogatory, please state how and from what source you derived your knowledge that they were the heirs of George Mather, senior, deceased.

3d. In what degree of relationship are each of the persons you have named as heirs, related to George Mather, senior; and do you know of your own personal knowledge whether there was or not a person or persons alive at the time of the death of said George Mather, senior, more nearly related to him?

4th. Did you know all the brothers and sisters, or descendants of them, of George Mather, senior, and where they lived, and whether they survived him, and who, and how many survived him?

5th. Did you know George Mather, junior; how near was he related to George Mather, senior; is he now alive, or if dead, did he leave any descendants, or brothers and sisters, or descendants of them, or any of them?

6th. Are you related or connected with any of the plaintiffs in this suit?

The third interrogatory of plaintiff is objected to; and the fourth interrogatory is objected to, because paper "A," to which it refers, does not accompany the interrogatory, nor any copy thereof.

G. WINCHESTER,
*For defendants.*

DOE on the demise of HICKEY, Wikoff, Duncan, et al.,
vs.
STEWART, Prosser, Leatherman, and Morris, et al.
} Ejectment.

Circuit court, ninth judicial circuit, southern district of Mississippi.

In pursuance of the annexed consent of parties in the above entitled cause, I have caused the witnesses therein named to appear before me at my office, in the town of Baton Rouge, State of Louisiana, and they and each of them having been first sworn by Augustin Duplantin, esq., a justice of the peace in and for the said parish and State, upon the holy evangelist of Almighty God, to declare the truth, the whole truth, and nothing but the truth, in answer to the said interrogatories and cross

interrogatories; I first propounded the said interrogatories to Thomas Gibber Morgan, one of the said named witnesses, who answered as follows:

In answer to the first interrogatory the witness saith: That he never knew George Mather, senior, or James Mather, senior; that he (witness) first came to the parish of East Baton Rouge in the autumn of the year eighteen hundred and twenty-two; that within a few days after his arrival in said parish, he became acquainted with the plaintiffs, and then understood from them that their father, (that is, the father of Mrs. Anna Hickey, Eliza Wikoff, Francis T. Duncan, and George Mather, junior,) James Mather, senior, had died shortly previous; the family were, at the period referred to, in deep mourning; and, as he then was informed, in mourning for the said James Mather, senior; witness does not know when George Mather, senior, died, or where.

In answer to the second interrogatory he saith: That since the year 1822 he has been on intimate terms with the Mather family, and never knew or heard of any heirs of George Mather, sen., except James Mather, sen., and his children, Anna Hickey, Eliza Wikoff, Frances S. Duncan, and George Mather, and James Mather, also a child of the said James Mather, sen., who died, as affiant has been informed and believes, before his said father, unmarried and without legitimate issue; affiant has known several other relations of the said James and George Mather, sen., but never heard any one of them pretend to have any claim to the estate of George Mather, sen.

In answer to the third interrogatory he saith: That he has frequently heard from the members of the said family, and from many others who said they were personally acquainted with the said George Mather, sen., that he died without legitimate issue.

In answer to the first cross interrogatory he saith: That, as he has before stated, he never knew George Mather, sen.; that he has frequently been told by the family, and by others who did know him, that he died at the parish of East Baton Rouge aforesaid; that for many years previous to his decease he had resided at the said parish, of which he was at one period parish judge.

In answer to the second cross interrogatory he saith: That he has no knowledge of the fact except from the family, and from hearing the fact frequently asserted by persons not of the family, and never having heard it contradicted or doubted, and from the fact that George Mather, junior, was, at the time witness first came to the said parish, in possession of a tract of land in the said parish, which, witness knows from having seen the titles, belonged to and formed a part of the estate of the said George Mather, senior, at the time of his decease; that the said George Mather, jun., continued in the possession of the said tract of land until the time of his decease, and it has since been sold as a part of his estate.

In answer to the third cross interrogatory he saith: That he has always been informed that James Mather, sen., was the brother of George Mather, sen., and has never heard that there was any person or per-

sons alive at the time of the death of George Mather, sen., more nearly related to him; the other persons named, to wit, Anna Hickey, Eliza Wickoff, Frances S. Duncan, and George Mather, jun., were the nieces and nephew of the said George Mather, sen., and he has never heard of any person more nearly related to him than they were, except their father, as aforesaid.

In answer to the fourth cross interrogatory he saith: That he never knew any of the brothers or sisters of the said George Mather, sen., and never heard that he had any brother or sister, except the said James Mather, sen.

In answer to the fifth cross interrogatory he saith: That he was intimately acquainted with George Mather, jun., during many years; witness always understood him to be the nephew of George Mather, sen.; George Mather, jun., died several years since; he left a widow and seven children, to wit, George Z., Aurore, now wife of A. M. Tureaud, James, Alexander, Charles, Joseph, and Louisa; his sisters were Anna, wife of Philip Hickey; Eliza, wife of William Wikoff, all now living; and Francis Sophia, late wife of Abner S. Duncan, both deceased, leaving the following children: Frances S., now wife of Frederic D. Conrad; Hannah, now wife of Alfred T. Conrad; Eliza, who died unmarried, and Abner.

In answer to the sixth cross interrogatory he saith: That he is not related to any of the plaintiffs; that he is not connected with any of them except as follows, one of the brothers and one of the brothers-in-law of witness are married to daughters of Philip and Anna Hickey.

THOMAS GIBBER MORGAN.

Sworn to and subscribed before me, this 29th day of April, A. D. 1840.

A. DUPLANTIN,
*J. Peace.*

Sworn to and subscribed in presence of the undersigned commissioner, this 29th of April, A. D. 1840.

DAN'L D. AVERY.

Then came and appeared the hon. Charles Tessier, who being duly sworn as aforesaid as one of the witness[es] named in said article of consent, I propounded the interrogatories and cross interrogatories therein contained, and reduced the answers to the same to writing, as follows:

In answer to the first interrogatory witness saith: That he was personally acquainted with George Mather, senior; that he never was married, and died about the year A. D. eighteen hundred and twelve; *The* he was acquainted with James Mather, senior, the brother of George Mather, senior, and that he died some years after his brother, George Mather, senior.

To interrogatory second witness saith: That he was acquainted with the family of the Mathers; knows that George Mather, senior, died

without leaving any descendants, and never knew of any other heir than his brother, James Mather, senior.

To interrogatory third. This interrog. is answered by the answer to the 2d interrogatory.

*Answers to the cross interrogatories.*

To 1st cross interrogatory: First became acquainted with George Mather, senior, about the year eighteen hundred and eleven; that he resided in the parish of East Baton Rouge some years previous to his death, and up to the time of his decease.

To 2d cross interrog. The said George Mather, senior, having no legal descendants, which fact he knows from personal knowledge; he believes James Mather, senior, to have been his only heir, having never known or heard of his having any other brothers or sisters.

To third cross interrog. he saith: that the same is answered by the reply to 2d cross interrog.

To 4th cross interrog. he saith: That he never knew that George Mather, senior, had any sister, or that he had any other brother than James Mather, senior, who lived a part of his time in the parish of East Baton Rouge; that Anna Hickey and Eliza Wikoff, Frances S. Duncan, and George Mather, junior, were the only descendants of James Mather, senior, and that they all survived their father.

To interrog. 5th saith: He knew George Mather, junior, who was a nephew of George Mather, senior; that George Mather, junior, is now dead; that at the time of his death he left a number of children, who are now living, and the names of whom he is not acquainted with.

To interrog. 6th saith: That he is not acquainted or connected with any of the plaintiffs in this suit.

CH. TESSIER.

Sworn to and subscribed before me, this 29th day of April, A. D. 1840.

A. DUPLANTIN,
*J. Peace.*

Sworn to and subscribed in the presence of the undersigned commissioner.

Witness my hand and private seal, at Baton Rouge, this twenty-ninth day of April, A. D. eighteen hundred and forty.

D. D. AVERY. [SEAL.]

It was admitted that Stark's heirs, under whom defendants claim, were in possession of the lands in suit in 1829 and since, till defendants entered into possession, and that the original defendants were in possession at the time this suit was brought; and they, the present defendants, still are in possession; plaintiffs then called F. Davis as a witness, who, being sworn, proved the death of John W. Leatherman and Mabry Morris since the commencement of the suit; and that Aminta

Leatherman, Aurelia Leatherman, John Leatherman, and Franklin Leatherman were the widow and heirs of said Leatherman, and in possession of that part of the lands originally held by said John Leatherman and said Mabry Morris; and that George Morris, Robert S. Morris, Green B. Morris, Jefferson Morris, Mahala Scott, Stephen Johnson and Margaret, his wife, Margaret S. A. Ayres, Rebecca Graves, were the heirs of said Mabry Morris, now living, and the above was all the testimony offered by said plaintiffs.

The defendants then read to the court the notice, with service thereon, acknowledged by R. M. Gaines, esq., counsel for plaintiffs, as follows:

DOE ex dem. HICKEY et al.,
heirs of Mather,
vs.
STEWART, PROSSER, et al.

United States' circuit court, 9th circuit, at Jackson.

To R. M. Gaines, G. L. Potter, attorneys for plaintiffs, and to said plaintiffs:

GENTLEMEN: Please take notice, that, on the trial of this cause, we shall claim an allowance for improvements made on the premises in question, in case of a recovery by plaintiffs, under the act of the legislature of the State of Mississippi, approved on the 5th March, 1846, and to be found on pages 238 to 241 of the session acts.

MONTGOMERY & BOYD,
G. WINCHESTER,
*For defendants.*

Natchez, 27th April, 1848.

I acknowledge service of the above by copy, this 27th April, 1848.
R. M. GAINES.

And then called F. Davis, as a witness, who was sworn, and then asked by defendants if he knew the value of the permanent and valuable improvements put upon the lands in suit by defendants since they took possession of said lands.

The plaintiffs having stated to the jury that they would not claim mesne profits in this action, to the answering of which question, plaintiffs, by counsel, objected, and the court sustained the objection, and would not permit the question to be answered; to which ruling of the court the counsel for defendants excepted. Defendants then offered in evidence to the jury the following record, it being admitted by the plaintiffs that the writ of error to the decree therein had been dismissed by the Supreme Court of the United States, in the year 1828, and said record being offered, first, to show that title claimed by plaintiffs had been declared fraudulent and void, as against the heirs of Stark; and, second, to show a good title in defendants, derived from said heirs of Stark, under and according to said record and decree.

Pleas before the honorable John P. Hampton and Powhattan Ellis, esqrs., judges, in and over the State of Mississippi, at a supreme court held at Natchez, in and for the State aforesaid, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-four:

Be it remembered, that heretofore, to wit, at a supreme court of the State of Mississippi, at the city of Natchez, on the second Monday in June, in the year of our Lord one thousand eight hundred and twenty-one, the judges of the superior court, at a superior court held at the court-house in and for the county of Adams, on the third Monday in November, in the year of our Lord one thousand eight hundred and twenty, transmitted to the said supreme court the following order, to wit:

STATE OF MISSISSIPPI,
*Adams county.*

Superior court, November term, 1820.

ROBERT STARK'S HEIRS
vs.
JAMES MATHER et al. } In chancery.

The court doubting as to the law in this case, it is ordered to be transferred to the supreme court, and to be continued to the June term of said court in 1821.

A true extract from the minutes.

(Signed) JOHN T. GRIFFITH, *C'lk.*

Wherupon the bill, answers, exhibits, and papers which *was* lately depending before the superior court aforesaid, between Robert Stark, Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormly, Rebecca Willison, Francis Gildart and Sophia, his wife, late Sophia Stark, and Elizabeth Stark's heirs and legal representatives of Robert Stark, deceased, complainants, and James Mather, defendant, were transmitted to the said supreme court, and follow in these words, to wit:

To the hon'ble the judge of the superior court of law and equity, for the county of Adams, in chancery sitting: Humbly complaining, sheweth unto your honors, your orators, Robert Stark, Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormly, Rebecca Willison, Francis Gildart and Sophia, his wife, late Sophia Stark, and Elizabeth Stark's heirs, and legal representatives of Robert Stark, deceased, that some time on or about the 29th day of December, in the year 1791, their ancestor, Robert Stark, obtained from the governor general of the province of Louisiana, Estivan Miro, a warrant or order of survey for two thousand acres of land, square measure, on the waters of the bayou Sara, in the then Natchez district, now part of the Mississippi territory of the United States, which warrant or order of survey, together with the actual survey of the said tract of land, made by the

deputy surveyor of the said district, William Dunbar, now deceased, and the petition of the said Robert Stark, is now in the possession of your orators, ready to be produced as your honors shall direct, and which they pray may be taken as a part of this their bill of complaint.

And your orators further complaining show unto your honors, that in obedience to the direction of said warrant or order, the said Robert Stark was put into full and certain possession of the said tract of land, by the proper authority, and that he not only complied with all the conditions specified in the said warrant, but continued for the space of years, to cultivate and improve the same, made an extensive clearing thereon, and raised several crops on it, and paid all the customary expenses of surveying, and advanced the fees necessary to procure the necessary patent for the further completion of the title.

And your orators further state unto your honors, that some time on or before the year seventeen hundred and ninety, the said Robert Stark not being entirely satisfied with the situation and neighborhood of the said tract of land, and being advised that he could locate a tract of land in a situation better suited to his views and to much greater advantage to his large and rising family, proposed to the governor of the Natchez district, Don Manuel Gayoso de Lemos, to relinquish said tract of land to the Spanish government, on the express condition that he should receive in exchange thereof, from the government, a tract of land equal thereto in value in such part of the district as he might select.

But your orators represent that from some cause unknown to them the said commandant had conceived a dislike to the said Robert Stark, and manifested for some time a strong disposition to deprive him of his right and title to the said tract of land; to this end the said commandant, some time in the year one thousand seven hundred and ninety, made a verbal proffer of the said tract of land to a certain James Mather, whom your orators pray may be made a defendant to this their bill of complaint, with apt words to charge them as such, and the same was immediately thereafter, some time in the year one thousand seven hundred and nine-four, granted by the Spanish government to the said James Mather, who took possession of the same with a large crop of corn then growing on the ground, together with all the buildings and improvements made thereon by the said Robert Stark; in consideration of which, the said Robert Stark never received, as he had a right to expect, any equivalent in land elsewhere; against all which acts the said Robert Stark solemnly protested as being unjust and unlawful.

And your orators further complaining show unto your honors, that they are informed, and verily believe, that the said James Mather, who had a perfect knowledge of the title of the said Robert Stark, obtained the grant for the said tract of land entirely through the influence of the said title after the said Robert Stark, and through the false and fraudulent representations in writing of the said William Dunbar, deputy surveyor of the said district, and other officers of the said government, who were urged and excited thereto by the said James Mather, in part evidence whereof your orators have now in their possession a memoran-

dum in the handwriting of the said William Dunbar, at the foot of the original warrant or order of survey, herein alluded to, purporting to be a sale and release of the said two thousand acres of land to the said William Dunbar, and to have been subscribed by the said Robert Stark; the said warrant of survey had been in the possession of the said William Dunbar for some time, and when it was delivered to the said Robert Stark, which was after the land in question had been regranted to the said Mather, it had the memorandum mentioned, but so obliterated, apparently by design, as to be but partially legible.

And your orators further state, that according to the laws, customs, and usages of the Spanish government, a Spanish warrant or order of survey was considered as equivalent to a complete grant, and on the parties fulfilling the conditions required thereby, a fee simple passed to the warrantee, and the government never regranted the lands so conveyed, unless the same became forfeited to the crown, or by consent of the holder of the warrant. Indeed, in latter days, the Spanish government did not exact from the grantees of lands the performance of many of the conditions required in the first settlement of the country, and all sales and transfers of land were required to be in writing, and the conveyance to be valid must have been filed or recorded in the public office. Your orators are informed, and believe, that the said Robert Stark never committed any act under the said government by which he forfeited his right to the said tract of land, nor did he ever dispose of the same to any person whosoever, or give his consent verbally or in writing to the government regranting the same.

And now, so it is, may it please your honors, the said defendant, James Mather, combining and confederating to and with divers persons to your orators at present unknown, but whom, when discovered, your orators pray may be made defendants hereto, with apt and proper words to charge them as such, how to injure and oppress your orators, continues to hold possession of the said tract of land against the just and equitable claim of your orators, and even refuses to account to your orators, as he refused to account to your orators' ancestor, the said Robert Stark, in his lifetime, for all the improvements of his boundary, and large quantities of corn and other produce to the amount of several hundred bushels, which the said defendant found on the said plantation and tract of land when he so iniquitously got possession of the same; sometimes alleging that the said Robert abandoned his right and title to the said tract of land, and that the same was thereafter lawfully and fairly regranted to him by the Spanish government; at others, alleging that the said Robert Stark forfeited the same by not fulfilling the conditions of the warrant; and at other times that the said Robert Stark transferred his right thereto to the said William Dunbar, who conveyed the same to the said defendant; and that it was by consent of the said Robert Stark that the said tract of land was regranted by the Spanish government to the said defendant. All which actings and doings are contrary to equity and good conscience, and tend to the great injury of your orators. In tender consideration whereof, and forasmuch as

your orators are remediless in the premises, except in this honorable court, where matters of this kind are properly cognizable; to the end, therefore, that the said James Mather and his confederates, when discovered, may, on their several and respective corporate oaths, perfect, full, and true answers make to all and singular the premises, as fully and particularly as if they were herein again repeated and interrogated; and by a decree of this honorable court the said James Mather be compelled to surrender unto your orators the full and entire possession of the said tract of land, together with the evidences of title which he has thereto, and that your orators may be quieted in their title thereto; and that your honors will grant unto your orators such other and further relief in the premises as to them shall seem meet. May it please your honors, the premises considered, to grant unto your orators the Territory's writ of subpœna, directed to the said defendant, James Mather, commanding him to be and appear in the honorable court on a certain day to be therein named, and under a certain penalty, to answer the allegations of this bill of complaint. And your orators, as in duty bound, will ever pray.

TAYLOR & SHEELS,
*Attorneys for complainants.*

The amended bill of complaint of Robert Stark, Alexander B. Stark, Theodore Stark, Mary Wormley, Rebecca Willison, Sophia Gildart, Horatio Stark, and Elizabeth Stark, heirs and representatives of Robert Stark, deceased, to the original bill of complaint, exhibited by the complainants against James Mather, defendant, in which amended bill George Mather, on his own application, is made defendant with the said James Mather.

Your orators and oratrixes, repeating, charging, and insisting on every thing set forth and stated in their original bill, to which this is an amendment, further state, that your orators and oratrixes have understood, since filing the said original bill, that the said George Mather pretends and holds out, in speeches, that the said James Mather, one of the defendants, and the father of said George Mather, conveyed the said tract of land to one George Mather, brother of him, the said James; and that he, the said George Mather, devised the same to the said defendant, George Mather, his nephew; but your orators and oratrixes expressly charge that, if any such conveyance and devise was made, it was for the purpose of defrauding your orators and oratrixes out of their equitable right and title to said land; for they say it was a matter of perfect notoriety, not only in the family and amongst the connexions of the said James Mather, but in the neighborhood, that the said Robert Stark, the elder, in his lifetime, and his heirs and representatives after his death, claimed title to said land, and of which the said George Mather, the brother of the said James, and the said George, son of the said defendant, had full notice before any conveyance or devise, as is pretended, took place, if any such ever was made; all

which actings and pretensions of said George Mather are contrary to equity and good conscience. To the end, therefore, that the said George Mather may, upon his corporate oath, true, distinct, and perfect answers make, to all and singular the matters and things hereinbefore stated, as fully and effectually as if the same was here again repeated and interrogated to, may be answered unto; and that this honorable court would not only decree as is prayed for in the original bill in this case, but that the said George Mather convey to your orators and oratrixes all and every claim and pretence which he may have to said land, and that your orators and oratrixes may have such other and further relief in the premises as the nature of the case may require; and that the said George Mather may appear and answer the premises, and abide by such order and decree as to your honors shall seem meet; and your orators and oratrixes will ever pray, and so forth.

SHIELDS & TAYLOR,
*Complainants' counsel.*

The separate answer of James Mather, one of the defendants, to the bill of complaint of Robert Stark, Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Rebecca Willison, Francis Gildart and Sophia, his wife, late Sophia Stark, and Elizabeth Stark, complainants; the defendant, now and at all times hereafter, saving and reserving to himself all and all manner of length and advantage of exceptions to the manifold inaccuracies, untruths, and imperfections, in the complainants' bill of complaint contained, for answer thereto, or so much thereof as this defendant is advised materially concerns him to make answer unto, he answereth and saith: That he has been informed, and believes it to be true, that the said Robert Stark, ancestor of the complainants, did obtain an order or warrant of survey for two thousand acres of land from the governor of the province of Louisiana, about the time in the complainants' bill mentioned in that behalf; and this defendant has also been informed that the tract of land, mentioned in the complainants' bill, was surveyed by the deputy surveyor for their said ancestor, and that he resided on it for a short time; but this defendant denies that the said Robert Stark, deceased, made either an extensive or costly improvement on said tract of land; and whether said Robert Stark, deceased, or any person for him, paid any expense or fees for surveying said tract of land, or for the warrant, this defendant is wholly ignorant.

And this defendant further answering saith, that, some time in the year 1792, he wished to purchase a tract of land from the Spanish government, in the district of Natchez, now Mississippi territory, and for that purpose applied to Manuel Gayoso de Lemos, then governor of the district of Natchez, who informed the defendant that the tract of land, now in question, was vacant, and that it would be granted to this defendant on his petition therefor. This defendant was informed that the said Robert Stark, deceased, had resided for a short time on the said tract of land, and inquired of said governor if he had no

claim thereto, or expectation of holding it, and was informed by said governor that said Robert Stark, deceased, had abandoned and given up said tract of land, and had no claim thereto. This defendant then applied to the said Robert Stark, deceased, then at the office of the said governor, and inquired of him if he had any claim to the said tract of land, who then answered this defendant that he had no claim thereto; that he had abandoned it, and should quit the country, and that this defendant was at full liberty to apply for said tract of land; whereupon this defendant petitioned for said tract of land, and obtained an order of survey therefor from the governor of the then province of Louisiana, dated on or about the 17th day of February, 1793, and the same was actually surveyed for this defendant by William Dunbar, then deputy surveyor, in the complainants' bill named, or on about the 20th July, in the year last aforesaid, and this defendant put in possession thereof; and on or about the 3d day of April then following a patent therefor, in due form, was issued to this defendant by the then governor of the province of Louisiana, to whom the granting did pertain.

And the defendant further answering saith, that during the whole time this defendant was procuring and perfecting his title to the said tract of land, the said Robert Stark, deceased, made no claim or pretence to the same; and this defendant further answering saith, that, at the time of procuring said title to said tract of land, he had no notice or intimation of any claim or title thereto by the said Robert Stark, deceased; but, on the contrary, the said Robert Stark assured this defendant that he had no claim or title thereto, on which this defendant insists the same as if it were pleaded.

And this defendant further answering does not admit, but denies, that when said Robert Stark, deceased, abandoned or relinquished said tract of land to the Spanish government that he made any condition with the government or commandant of the district of Natchez to have any other land in lieu thereof; but this defendant says, and so the truth is, that said Robert Stark abandoned said tract of land with a view of leaving the country, and did actually quit the country immediately after relinquishing and abandoning said tract of land, and made no application whatever for other lands in the Spanish dominions. And this defendant answering saith, that he has been informed, and verily believes, that when said Robert Stark, deceased, abandoned said tract of land, and quitted the Spanish dominions, the said warrant or order of survey was left in the hands of the deputy surveyor before named, and was never again possessed thereof till the said Robert Stark, deceased, returned to the Mississippi territory, after the establishment of a government therein under the jurisdiction of the United States; and that said warrant by some means came into the hands of the said Robert Stark after his return under the American government; and that said Robert Stark, deceased, instituted his action of ejectment against the tenant of this defendant, James Stalls, then in the possession of the said tract of land, in the then district court of the district of Adams, to which action

this defendant made defence by his said tenant, and on the trial permitted the said Robert Stark to give in evidence every pretence of title on his part, either written or parol; and on said trial a verdict and judgment was rendered against said Robert Stark, deceased, on a full investigation after [of the] merits of the said cause, either equitable or legal; all of which will more fully appear by the record and proceedings of the said suit in said court remaining, and which this defendant prays may be taken as a part of his answer.

And this defendant further answering, denies that he ever took possession of any crops of corn or other property belonging to the said Robert Stark, deceased. And this defendant also denies that he ever had any collusion in any manner whatsoever with said William Dunbar, deceased, respecting said tract, nor does he believe that said William Dunbar ever practised any fraud or designs upon the said Robert Stark, deceased, respecting the same.

And this defendant further answering saith, that on or about the 20th day of April, 1803, he sold and conveyed the said tract of land in fee simple to George Mather, since deceased, for a full and valuable consideration in money, and services paid to and performed for this defendant by the said George Mather in his lifetime. And the said defendant further answering saith, that the said defendant and the said George Mather in his lifetime, and those claiming under him since his death, have been in possession of said tract of land for more than twenty years, occupying, cultivating, and improving the same, on which the defendant himself insists the same as if it were pleaded. And this defendant further answering denies all and all manner of frauds and combinations wherewith he stands charged; without that any other matter or thing in the complainant's bill contained, and not herein and hereby fully answered, averred, traversed, or denied is true, in such manner and form as therein stated, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

L'Y HARDING, *for defendants.*

James Mather, the above named defendant, maketh oath that the matters and things stated in the foregoing answer, as of his own knowledge are true; and the matters and things therein stated as from information of others he believes to be true.

Sworn to and subscribed before the undersigned

CHARLES FOSSER, *Parish Judge.*

The pleas of George Mather, one of the defendants to the bill of complaint of the heirs of Robert Stark, deceased, complainant.

This defendant, by protestation not confessing all or any part of said bill to be true, in manner thereunto set forth, for plea thereto saith, that George Mather, now deceased, was a purchaser in his lifetime of all the lands and tenements in the complainants' bill mentioned for a valuable consideration in money and services, really and bona fide paid to and performed for said James Mather in said bill named, without

the notice of the complainants' pretended title in the said bill mentioned, or that of the said Robert Stark, deceased; and that the said James Mather did, by good and sufficient conveyances in the law, as this defendant is advised, convey the same lands and tenements to the said George Mather in his lifetime, and his heirs, absolutely without any manner of condition whatever; and that the defendant derives title to said lands and tenements from the said George Mather, deceased; all which matters and things this defendant is ready to aver and prove as this honorable court shall award, and humbly pleads the same in bar to the complainants' said bill of complaint, and prays the judgment of this honorable court thereon.

LY. HARDING,
*Counsel, def'ts.*

George Mather, the above named defendant, maketh oath, that the matters and things stated in the foregoing plea are true, to the best of his knowledge and belief.

GEORGE MATHER.

Sworn to before me; in testimony whereof I have hereunto set my hand and seal, at Baton Rouge, October 14th, 1815.

CHARLES FOSSEIR, [L. S.]
*Parish judge.*

The replication of Robert Stark, Alexander Stark, Theodore Stark, Horatio Stark, Rebecca Willison, Mary Wormley, Sophia Gildart, and Elizabeth Stark, heirs and legal representatives of Robert Stark, dec'd, to the separate answer and plea of James Mather and George Mather, defendants; the repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer and plea, for replication thereto say, that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer and plea of the said defendants are uncertain, untrue, and insufficient to be replied unto; without that any other matter or thing whatsoever in the said answer and plea contained, material or effectual in law to be replied to, and herein not replied unto, confessed or avoided, traversed or denied, are true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall award; and here pray, as in and by their said bill they have already prayed.

TAYLOR & SHEELDS,
*Compits' counsel.*

This cause was then legally continued.

Afterwards, to wit, at a superior court of the State of Mississippi, held at the city of Natchez and court-house of Adams county, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-one, (1821,) the following order was made, to wit:

Ordered, that an issue be made up by the parties in this case, to ascertain whether the ancestor of the complainants ever made a voluntary abandonment of his right to the premises in question, free from any undue influence on the part of the Spanish government or its officers, and that the said issue and verdict be directed to the superior court of Adams county, to be tried at the next term.

Afterwards, to wit, at a superior court of the State aforesaid, held at the town of Columbia, and county of Marion, on the second Monday in June, (A. D. 1822,) in the year of our Lord one thousand eight hundred and twenty-two, this cause was legally continued.

Afterwards, to wit, [at] a superior court of the State aforesaid, held at the city of Natchez, at the court-house of Adams county, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-two, the following order, in addition to the one last made, was made, to wit:

And it is further ordered, that, on the trial of the issue directed in this case, at December term of said court, 1821, the evidence heretofore taken in the case be read and heard, and such other evidence as is properly admissible in such trials, and that the defendant in the bill tender the issue to the complainants, on or before the first day of the next term of the circuit court of Adams county, which shall be tried at said term.

Whereupon the following issue was made, and transmitted to the court last aforesaid, to wit:

Be it remembered, that, at the December term, 1821, of the supreme court, the said court made an order on a case pending before it in chancery, wherein Stark's heirs are complainants, and James Mather and George Mather are defendants, that an issue be made up by the parties in this case, to ascertain whether the ancestor of complainants ever made a voluntary abandonment of his rights to the premises in question, free [from] any undue influence on the part of the Spanish government, or its officers, and that the said [issue] and evidence be directed to the superior court of Adams county, to be tried at the next term.

And whereas, also, the said supreme court, at the December term, 1822, made a further and supplemental order, which, among other things, directs that the defendants in this bill tender the issue to the complainants, on or before the first day of the next term of the circuit court of Adams county.

Now the said defendants give the court to understand and be informed, and so aver the fact to be, that the ancestor of the said complainants, named in said bill and answer, did make a voluntary abandonment of his rights to the premises in the bill mentioned; to which said bill they refer for greater certainty, as also to the answer; without that, that the said Stark, the ancestor of the said complainants, was compelled, by an undue influence or force on the part of the Spanish government, or its officers, to make the said abandonment, and to relin-

quish his rights to the land in the said bill and answer mentioned, and so they are ready to verify.

THOMAS B. REED, and
TURNER & METCALF,
*For defendants.*

And the complainants in said bill, in conformity to the direction of the said supreme court, in chancery sitting, by whom the order for said issue was made, say, that their ancestor, the said Robert Stark, in said bill mentioned, did not make a voluntary abandonment or surrender of his claim, right, and title to the said land and premises in said bill mentioned, free from any undue influence or coercion on the part of the Spanish authorities, its government, or officers, and this they pray may be inquired of by the country, &c.

RANKIN, ADAMS & CHILDS,
*Counsel for complainants.*

Whereupon the issue and all the other papers relating thereto were transmitted to the circuit court of Adams county.

Afterwards, to wit, at a supreme court of the State aforesaid, held at the court-house of Adams county, in the city of Natchez, on the second Monday of June, in the year of our Lord one thousand eight hundred and twenty-three, the papers relating to the cause, as also the verdict, were transmitted to the said supreme court from the circuit court of Adams county aforesaid, which said verdict is as follows, to wit:

STATE OF MISSISSIPPI, *Adams county.*

ROBERT STARK'S heirs
vs.
MATHER and Mather.

Circuit court, May term, 1823.

A jury called came, to wit: Robert Gridley, H. F. Walworth, Richard Crist, James B. Mivore, David H. Hough, Arthur Brown, John Nugent, C. T. Bul, William B. Mulvin, John Connor, David Dunn, Francis Grant. Who on their oaths say, we of the jury find, that the complainants ancestor, Robert Stark, did not make a voluntary abandonment and surrender of his claim, right, and title to the said lands and premises, in said bill mentioned, free from any exercise of undue influence or coercion on the part of the Spanish authorities, its government, or officers.

I certify the above to be a true extract from the minutes of said court. Given under my hand and the seal of said court, the 9th day of June, 1823.

(Signed,) JOHN F. GRIFFITH, *Clerk.*

To which said verdict the following exceptions were filed, to wit: And now the said defendants, by Reed and Turner, their counsel, came

and except to the finding of the jury, and to the form of the verdict, and return on the issue directed to be tried at law in this case, for the following reasons, to wit:

1st. Because the said verdict is contrary to evidence.

2d. Because the subject matter of said issue is more proper triable by the court than by a jury, being a mixed question of law and fact.

3d. Because the judge before whom the issue was tried, has made no report of the evidence of the finding of the jury, nor of his opinion on the case, whether he is satisfied or dissatisfied with the verdict.

4th. Because said verdict is in other respects insufficient, and wants form and substance.

(Signed,) E. TURNER, *Deft's counsel.*

Afterwards, to wit, at a supreme court of the State aforesaid, held at the court-house of Adams county, city of Natchez, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-three, this cause was legally continued.

Afterwards, to wit, at a supreme court of the State aforesaid, held at the court-house of Adams county, city of Natchez, on the second Monday in June, in the year of our Lord one thousand eight hundred and twenty-four, the following affidavit was made and filed, to wit:

THE STATE OF MISSISSIPPI,
*Supreme court.*

ROBERT STARK'S HEIRS
vs.
MATHER & MATHER. } In chancery.

Edward Turner makes oath that he has been credibly informed, and verily believes it to be true, that James Mather, one of the defendants in this suit, is not now in being; that he departed this life some time in the year 1822 or 1823, in the State of Louisiana.

Sworn to and subscribed in open court, the 15th day of June, 1824.

(Signed) E. TURNER.
HOWEL MOSS, *Clerk.*

Whereupon the death of James Mather is suggested, and the cause argued and taken under advisement by the court. Afterwards, and at the same time of the court last aforesaid, the court ordered a re-argument to be had in said case, and the following order made, to wit:

It appearing to the satisfaction of the court that James Mather, one of the defendants in said cause, has departed this life during the pendency of said cause in said court, and that the heirs and legal representatives of the said James Mather are not residents of this State, but are residents of the State of Louisiana, it is therefore ordered by the court, that the said heirs and legal representatives of the said James Mather come forward, by the next term of this court, to be held on the second Monday in December next, at the court-house in the city of Natchez, and cause themselves to be made defendants to

said bill of complaint, or the same will be taken for confessed against them; it is further ordered, that a copy of this order be published three times in city paper in the city of New Orleans.

Afterwards, to wit, at a supreme court of the aforesaid State, held at the court-house of Adams county, city of Natchez, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-four, this cause was revived in the name of George Mather, Anna Mather Hickey, Philip Hickey, Elizabeth Mather Wikoff, and Frances Sophia Mather Duncan, heirs-at-law of the said James Mather, deceased, and the cause argued fully, and the following order made, to wit: "Decree signed and ordered to be enrolled, and ordered that no execution issue for ten days after the adjournment of court." Whereupon the following decree was made in said court, and enrolled, to wit:

In the Supreme court, December term, 1824.

ROBERT STARK'S heirs
vs.
The legal representatives of GEORGE MATHER and JAMES MATHER.

This cause coming on for final hearing upon re-argument before the supreme court of the State of Mississippi, in chancery sitting, upon bill and amended bill of complainants, the answer of defendants, and plea of one of the defendants, and replication thereto, together with the depositions, exhibits, and the verdict of the jury in said cause, on an issue awarded by the court; and counsel on both sides having been heard, the substance of the bill appearing to be, that some time in the year 1791, Robert Stark, the ancestor of the complainants, obtained from the governor general of the province of Louisiana, Estevan Miro, a warrant, or order of survey, for two thousand acres of land, square measure, on bayou Sara, in the then Natchez district, now Wilkinson county, of this State, which warrant, and the evidence of actual survey in pursuance thereof by William Dunbar, deputy surveyor of the said *said* district, and the petition of the said ancestor therefor, are in possession of the complainants, ready to be produced; that their said ancestor was put into possession of the said tract of land by the proper authorities, conformable to the instructions and requirements contained in said warrant of survey, and complied on his part with all the conditions of cession, continued for several years in possession, made extensive clearings, raised several crops, paid the fees for surveying, made the necessary advances for perfecting the title by patent. Some time after which settlement, their said ancestor, not satisfied with the situation of said tract, proposed to Governor Gayoso to relinquish said tract of land, on express condition that he should receive in exchange therefor another tract equal in value, which he might se-

lect. But the said government, without complying with said condition, from a personal dislike to their said ancestor, offered his said tract of land to one James Mather, to whom it was immediately afterwards, in 1794, granted, and who took possession of the same, together with farming utensils and crops of corn then growing; against which arbitrary conduct of the said governor, and fraudulent practice of said James, their said ancestor then protested, as unjust and unlawful; that the said James Mather, who had a perfect knowledge of the title of said ancestor of complainants to the said tract of land, obtained a grant therefor entirely through the influence of said title, and the false and fraudulent representations of William Dunbar and other officers of the Spanish Government, who were urged and excited thereto by the said James Mather; in part evidence whereof complainants have now in possession a memorandum in the handwriting of the said William Dunbar, at the foot of the original warrant or order of survey, purporting to be a sale and release of the said 2,000 acres to the said William Dunbar, and to have been subscribed by the said ancestor of complainants. The said warrant or order of survey had been in the possession of the said William Dunbar, when delivered to the said R. Stark, which was after the grant of Mather; it had the memorandum mentioned, but so obliterated, apparently by design, as to be but partially legible. The bill further states that, according to the laws, usages, and customs of the Spanish government, a Spanish warrant or order of survey was considered an equivalent to a complete grant, by which, on the fulfilment of the condition imposed, a fee simple [title] passed to warrantee, and that the governor never regranted the land so conveyed, unless the same became forfeited to the crown, or by consent of the first grantee; and in later days the Spanish government was not in the habit of exacting from their grantees many of the conditions to the early grants, and no transfers of rights, thus acquired, were valid unless the same were in writing and duly recorded. They deny that their ancestor ever committed any act by which a forfeiture of his right to the said tract of land resulted to the government, or ever disposed of the same to any person, or gave his consent, either verbally or in writing, to the proper authorities to regrant the same, but that by confederation, and the said James Mather obtained and keeps possession of the same, and refuses to account for the corn and implements of husbandry acquired therewith. The prayer is for a surrender of the land, its titles, peaceable possession thereof, and for general relief.

The answer of James Mather admits the acquisition of the order of survey, its execution, and possession of the ceded premises under it by ancestor of complainants, but denies his having made either costly or expensive improvements thereon, and professes ignorance as to the fees paid for said survey, and moneys advanced for perfecting title; alleges, that some time in 1792 respondent desiring to acquire a tract of land in the Natchez district, made application to Governor Gayoso, the governor of said district, who informed him that the tract of land now in question was vacant, and that the concession would be made to him on his

petitioning therefor. Respondent having understood that R. Stark, the ancestor of complainants, had resided on said tract for a short time, inquired of the said governor if he had no claim thereto, or expectation of holding it, when the said governor informed respondent that he, the said R. Stark, had abandoned and given up his claim to it. Respondent inquired of the said R. Stark, being at the house of the governor at that time, if he had any claim to the said tract of land, who answered in the negative; that he had abandoned it, and would quit the country, and that the respondent was at full liberty to apply therefor; whereupon defendant petitioned for said tract of land, and obtained an order of survey therefor from the governor of the province of Louisiana, dated 7th of February, 1793, and that the same was actually surveyed by William Dunbar, deputy surveyor, on the 20th of July, in the same year, and defendant invested with possession; and about the 3d of April, 1794, a patent issued for the same premises to respondent under the seal of the governor of the said province, to whom the granting of land therein pertained; that during the whole of this time, while respondent was perfecting his title aforesaid, the said R. Stark, the ancestor of complainants, made no claim or pretence of claim, to the same; that at the time of purchasing said title to the said tract of land, this respondent had no notice of any other claim thereto, but was assured by the said R. Stark that he had none, on which the respondent insists the same as if it was pleaded. Respondent further answering denies that when the said R. Stark relinquished and abandoned his claim as aforesaid, he made any reservations or conditions with the governor commandant of said district of Natchez, by which he was to have other lands in lieu of those thus abandoned, but the said abandonment was for the purpose of quitting the country, which the said R. Stark did do immediately thereafter, without having made any application for other lands in the Spanish dominions; and respondent believes that when the said R. Stark thus abandoned his lands and the Spanish country, the said warrant or order of survey was left in the hands of the said deputy surveyor, and did not again come into possession of the said R. Stark until his return to the country after a change of government, after which the said R. Stark instituted his action of ejectment against tenant of respondent in the district court for the district of Adams, to which action defendant made defence, and permitted the same R. Stark to give all matters in evidence, as well in parol as in deed, touching his said title; and after full examination of both legal and equitable of both parties, a verdict was rendered for defendant. Denies taking possession of crop or any other property of said R. Stark; denies all collusion with said William Dunbar, nor does he believe said William ever practised any fraud or designs against the said R. Stark in relation to said tract of land. That on the 26th of April, 1803, respondent sold out, conveyed said tract of land in fee simple to George Mather, now deceased, for full consideration paid him in money and in services by the said George in his lifetime; that this defendant and the said George in his lifetime, and those claiming under him since his

death, have been in possession of said premises more than twenty years, occupying, cultivating, and improving the same, on which he insists as if pleaded; denies all fraud, combination, &c.

The amended bill charges that George Mather, junior, who is now made party defendant, pretends that James Mather, father of said George, conveyed the said premises to George Mather, senior, brother of him, the said James, and that he, the said George, sen'r, devised to the said George, junior, his nephew. But they expressly charge that if such conveyance was made, the same is in fraud of complainants, for they say it was a matter of public notoriety, not only in the family of the said Mather, but also in the neighborhood, that the said R. Stark, the ancestor of the complainants in his lifetime, and his heirs since his death, claimed title to the said tract of land, of which the said George Mather, sen'r, brother of the said James, and the said George, junior, another defendant, had notice before any conveyance or devise, as is pretended to have been made, if ever made.

Prayer as in the original and conveyance from the said George Mather, junior, to the complainants of the said premises, and for general relief.

The plea of George Mather states that George Mather, senior, was a purchaser for valuable consideration of his brother James, without notice, and devised the said premises to him, the said George Mather, junior, defendant.

Whereupon it appearing that the equitable of complainant to said tract of land, had not been in issue on the trial at law, and that their only remedy was in this court; and it further appearing to the court, on the examination of the depositions, and by verdict of the jury that complainants' ancestor never abandoned or surrendered his claim to the said tract of land, or by any act *or* commissions or omissions forfeited his title as pretended by defendants' answer; and it further appearing to the court that the title of defendant was obtained by fraud, force, and violence against the equity of complainants' ancestor; and it further appearing to the court that the statements in the bill of complaint are true, and that the plea of George Mather is untrue, and the court being satisfied with the verdict of the jury, it is therefore ordered, adjudged, and decreed, that the title of defendants to said tract of land be and the same is hereby declared to be fraudulent and void, as against complainants. It is further ordered, adjudged, and decreed, that the defendants, respectively, within sixty days after the decree, under the direction of the clerk of this court, by good and sufficient deeds of conveyance, containing apt covenants against their several acts and deeds, release and convey to the complainants, their heirs and assigns forever, all their respective rights, title, and claim, and demand to the said tract of land, with the hereditaments and appurtenances to the same belonging; and that they also in the same time deliver to complainants the full and peaceable and actual possession of said tract of land, and that a writ of habere facias possessionem be awarded in favor of complainants against the defendants for the same, not to issue,

however, until after ten days from the adjournment of the court, and that defendants pay to complainants their costs to be taxed in this suit, and complainants have execution therefor.

The defendants, conceiving themselves aggrieved by the judgment and decree of the court aforesaid, presented their petition for a writ of error, which is as follows, to wit:

To the honorable John P. Hampton, chief justice of the supreme court of the State of Mississippi.

The petition of George Mather and others, heirs-at-law of James Mather, deceased, respectfully represents, that during the present term of the supreme court, a suit in chancery, referred to the said supreme court for its decision, wherein Robert Stark's heirs were complainants, and George Mather and the heirs of James Mather, deceased, were defendants, came on to be heard; and after a reargument of the case, the said supreme court pronounced a decree therein in favor of the said complainants and against the said defendants; which said decree has been duly signed and enrolled among the records of said court.

Your petitioners would further state, that the claim of the said ancestor, James Mather, deceased, arose under the articles of agreement and cession between the United States and the State of Georgia; and that by the said decree the title so derived has been overruled, and in effect abrogated, and that under such circumstances, the jurisdiction of the court of the United States attaches to the case, and a writ of error lies to the Supreme Court of the United States to reverse the decision or decree as aforesaid, it having been pronounced by the highest court of law and equity in the State of Mississippi.

They further represent, that they are advised that there is manifest errors in the proceedings had in the said case, as also in the said decree therein pronounced, and that they are desirous of removing the same under the act of Congress, by writ of error to the Supreme Court of the United States, in order that the errors, if any in the said proceedings and decree, may be reversed and corrected. They therefore pray your honor, under a provision of an act of Congress in such case made and provided, to award a writ of error, in the case, to operate as a supersedeas, upon bond and security being given, as the law directs. They, as in duty bound, will ever pray.

GEORGE MATHER *and others.*
By THOS. B. REED, *their attorney.*

Let a writ of error issue as prayed for, upon said petitioners executing bond in the penal sum of three thousand dollars with James and Robert Moore, their securities, conditioned according to the act of Congress in such case made and provided. Natchez, January 22, 1825.

JOHN P. HAMPTON.

To HOWEL MOSS,
*Clerk of the supreme court of the State of Mississippi.*

Whereupon the defendants filed their powers of attorney to Philip

Hickey, for the purpose of entering into bond, which follows in the words, to wit:

UNITED STATES OF AMERICA,
*State of Louisiana.*

Know all men by these presents, that on the 25th day of January, in the year one thousand eight hundred and twenty-five, before me, Francis Gordon, notary public in and for the parish of East Baton Rouge, duly commissioned, and by law authorized to receive proof and acknowledgment of letters of attorney, and in the presence of the witnesses hereafter named, personally came and appeared William Wikoff, sen'r, and Elizabeth, his wife, late Elizabeth Mather, Anna Hickey, late Anna Mather, and Francis G. Duncan, late Francis Mather; the said Elizabeth, Frances, and Anna being children and legal heirs and representatives of James Mather, late of this parish and State, deceased, who declared to have made, ordained, and nominated, and appointed, and by these presents do make, ordain, nominate, and appoint, and in their place and stead put and depute, Philip Hickey, esq., of this parish, their true and lawful attorney; giving, and by these presents granting, unto their said attorney full power and lawful authority for them, the said constituents, in their names and to their use and behalf, to sue out a writ of error to the Supreme Court of the United States of America, on a certain final decree pronounced by the court of chancery of the State of Mississippi, in a case lately pending before said court, in which the heirs of Stark are complainants, and the constituents defendants; and also to make, sign, and execute all such bond or bonds for the prosecution of said writ of error to final judgment, and also for the security of costs, as shall be necessary for prosecuting the same; and generally in the premises to do and execute and perform all and whatsoever shall be requisite and necessary in the premises, in as full and ample a manner, to all *interests* and purposes, as they, the said constituents, might or could do if personally present; also with power of substitution and revocation; they, the said constituents, hereby promising to ratify and hold for firm and valid all and whatsoever their said attorney shall lawfully do in the premises.

In testimony whereof I, the said notary, have hereunto set my hand and seal of office, the parties signing their names within presence of James Mather and Jonathan H. Chesley.

(Signed) WILLIAM WIKOFF,
ELIZA WIKOFF,
ANNA HICKEY,
FRANCIS G. DUNCAN.

JAMES MATHER,
J. H. CHESLEY.

F. GORDON, *Not. Pub.*

STATE OF LOUISIANA,
*City of New Orleans.*

By this instrument of procuration, be it known, on this twenty-sixth

day of January, in the year of our Lord one thousand eight hundred and twenty-five, and the forty-ninth of the independence of the United States of America, before me, Hugh K. Gordon, notary public in and for the parish of New Orleans, duly commissioned and sworn, personally came and appeared George Mather, of the parish of Saint James, of the State of Louisiana, planter, one of the heirs of the late James Mather, of the said James Mather, of the State of Louisiana, deceased, who declared that he has made and appointed, and does by these presents make, constitute, and appoint, and in his place and stead depute and put, Philip Hickey, of Baton Rouge, in this state, to be his true and lawful attorney in fact, granting unto the said attorney full power and authority, for him, in his name or otherwise, for his use to pursue and prosecute a writ of error, to sign a writ of error bond, and to do and perform all and whatsoever shall and may be required and necessary in and to the prosecution of the case or suit of the heirs of Stark vs. said James Mather, deceased, lately pending in the supreme court of the State of Mississippi, sitting in the city of Natches, and where the said case was decided against the said heirs of Mather, and to sign all petitions and instruments of writing, and to do and perform all matters and things requisite and necessary in and concerning the premises, as fully and effectually, to all intents and purposes, as he, this constituent, could or might do if personally present at the doing thereof; hereby ratifying all and whatsoever the said attorney shall lawfully do by virtue of this act of procuration. This done and passed at New Orleans aforesaid, in presence of John Peterkin and John Stringer, both of said city, witnesses, who hereunto subscribed their names as such, with the appowery, and me, the notary, who grant these presents, under my signature and seal of office.

GEORGE MATHER.

JOHN PETERKIN,
J. STRINGER.

HUGH K. GORDON. [SEAL.]

UNITED STATES OF AMERICA,
*State of Louisiana.*

By Henry Johnson, governor of the State of Louisiana. These are to certify, that Hu. K. Gordon, whose name is subscribed to the instrument of writing hereto annexed, was at the time of signing the same, and is now, notary public in and for the city and parish of New Orleans, duly qualified and commissioned.

Given at New Orleans, under my hand and the seal of the State, this twenty-eighth day of January, one thousand eight hundred and twenty-five, and of the independence of the United States the forty-ninth.

H. JOHNSON. [SEAL.]

Whereupon the said plaintiffs in error, by their attorney aforesaid, entered into bond, of which the following is a copy:

STATE OF MISSISSIPPI.

Know all men by these presents, that we, Philip Hickey, George Mather, William Wikoff, senior, Eliza Wikoff, Anna Hickey, and Francis G. Duncan, heirs and legal representatives of James Mather, deceased, and James Moore and Robert Moore, are held and firmly bound unto Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Mary Stark, Sophia Gildart, and Elizabeth Stark, Thos. T. Willison, James Dillett and Harriet, his wife, late Harriet Willison, heirs and legal representatives of Robert Stark, deceased, in the sum of three thousand dollars, to be paid to the said Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Sophia Gildart, Elizabeth Stark, Thomas Willison, and James Dillett and Harriet, his wife, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seal, and dated this thirty-first day of January, eighteen hundred and twenty-five.

The condition of the above obligation is such, that whereas, at a term of the supreme court of the State of Mississippi, in chancery sitting, a judgment or decree was entered by said court in favor of the said Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Sophia Gildart, Elizabeth Stark, Thomas T. Willison, and James Dillett and Harriet, his wife, and against the said Philip Hickey, George Mather, William Wikoff, sen'r, Eliza Wikoff, Anna Hickey, and Francis G. Duncan, and the said Philip Hickey, George Mather, William Wikoff, sen'r, Eliza Wikoff, and Anna Hickey, and Francis G. Duncan, conceiving themselves aggrieved by said judgment or decree, have prayed and sued out of the said supreme court in chancery a writ of error to the Supreme Court of the United States, requiring the clerk of the said supreme court of the State of Mississippi, in chancery, to certify and bring up the record and proceedings of the said suit lately pending therein, wherein the heirs of Stark aforesaid are complainants, and the heirs and legal representatives of James Mather, deceased, are defendants, that the said Supreme Court of the United States may cause forthwith to be done in the premises what of right ought to be done.

Now, if the said Philip Hickey, George Mather, William Wikoff, senior, Eliza Wikoff, Anna Hickey, and Francis G. Duncan, shall prosecute their writ of error with effect, and shall well and truly pay and satisfy all such damages, interest, and costs, as the said Supreme Court of the United States shall award in the premises, then the above obligation to be void, otherwise to remain in full force and virtue.

PHILIP HICKEY, [SEAL.]

*For himself and attorney in fact for*

WILLIAM WIKOFF, Sen'r, [SEAL.]
ELIZA WIKOFF, [SEAL.]
ANNA HICKEY, [SEAL.]
F. G. DUNCAN, [SEAL.]
GEORGE MATHER, [SEAL.]

JAMES MOORE, [SEAL.]
ROBERT MOORE. [SEAL.]

Signed, sealed, and delivered in the presence of—
HOWEL MOSS.

Whereupon the following writ of error was issued, to wit:

UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the supreme court of the State of Mississippi, greeting:

Because, in the record and proceedings, as also the rendition of the judgment of a plea, which is in the said supreme court, before you or some of you, between Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Mary Stark, Sophia Gildart, Elizabeth Stark, Thomas T. Willison, James Dillett and Harriet, his wife, late Harriet Willison, heirs and representatives of Robert Stark, deceased, complainants; and Philip Hickey, George Mather, William Wikoff, senior, Elizabeth Wikoff, Anna Hickey, and Francis G. Duncan, heirs and legal representatives of James Mather, deceased, defendants, a manifest error hath happened, to the great damage of the said Philip Hickey, George Mather, William Wikoff, senior, Elizabeth Wikoff, Anna Hickey, and Francis G. Duncan, as by their complaint appears. We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then, under your seals, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the first Monday of February next, in the said Supreme Court to be there and then held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable John Marshall, chief justice of the said Supreme Court, at the city of Washington, on the Monday, in the year of our Lord eighteen hundred and , and forty-ninth of American independence.

[L. S.]

HOWELL MOSS, *Clerk.*

Issued 7th December, 1825.

Whereupon *on* the following citation was issued:

THE STATE OF MISSISSIPPI,
*Supreme court in chancery.*

ROBERT STARK'S heirs, complainants,
vs.
JAMES MATHER'S representatives, defendants.

*Decree for complainants, December term,* 1824.

To the complainants, or their attorney.

Take notice, that the defendants in the above case have sued out and obtained a writ of error to the Supreme Court of the United States, returnable at Washington city, on the first Monday in February next, at which time and place you are hereby cited to appear and show cause, if any you can, why the judgment or decree of the said supreme court of the State of Mississippi, in chancery, should not be reversed, for the errors then and there to be assigned.

JOHN P. HAMPTON,
*Presiding Judge, &c.*

Issued 7th December, 1825.

Acknowledged service of the above for myself and the other heirs.
THEODORE STARK.

The above acknowledgment was taken and made in my presence, this 7th December, 1825.

HOWELL MOSS, *Clerk.*

The evidence read in the foregoing case is as follows, to wit:

*Moses Johnson's deposition.*

Interrogatory 1st. Did you know the said Robert Stark in his lifetime; if so, at what time and how long did you know him?

Answer. That he was acquainted with the late Robert Stark, deceased; he became acquainted with him at a place called the Ridge, in South Carolina, about the year seventeen hundred and eighty-two, from which place this deponent and the late Robert came in company to the Mississippi territory, and that he remained in his employment upwards of four years.

2nd. Have you any knowledge of the said Robert Stark holding and possessing a tract of land, lying on the bayou Sara creek, in the Mississippi territory, containing 2,000 acres or thereabouts, under a grant under the Spanish government?

Answer. That he knew that the said late Robert Stark held and possessed a tract of land, lying on the bayou Sara creek, in the Mississippi territory, containing 2,000 acres or thereabouts, under a grant of the Spanish government.

3rd. How long did the said Robert Stark occupy and cultivate the said tract of land; and did you, or did you not, superintend the same for him; if yea, at what time, how long, how many acres were cultivated, and how many crops were made thereon?

Answer. That the said late Robert Stark occupied and cultivated this said tract of land three years; that this deponent superintended the clearing and cultivation for him, as the said late Robert Stark upon his arrival in the said territory put ten of his slaves under the direction of this deponent, who took them to the said tract of land, where they re-

mained three years, and with whom this deponent made three crops. There was, as well as this deponent can at this distance of time recollect, between thirty-five and forty acres enclosed with a good fence, and under cultivation for the two last years.

4th. Was or was not the said tract of land surveyed for the said Robert Stark by William Atchison, deputy surveyor, under the Spanish government; and if so, about what time was said survey made; have you any knowledge of the said James Mather having gotten possession of the said tract of land at any time since?

Answer. That he knew that the said tract of land was surveyed for the late Robert by William Atchison, or a deputy surveyor, under the Spanish government, some time during the first year that this deponent resided on said tract, the year seventeen hundred and ninety-one or ninety-two, and after some improvement was made, as he, this deponent, was one of the chain carriers; he also says that after he left the said territory he went and lived about four years within about six miles of the said tract, and often went to the said place; that immediately after he left it George Mather sent two men to take possession of it, and took at the same time possession of about three hundred bushels of corn, which they consumed, that this deponent left on the place in cribs; he knows that those two men were sent there by the said Mather, as they told this deponent so, and as he knows that the said Mather furnished them with meat, horses, and farming utensils.

5th. Do you know any thing further material to the complainants in this cause? If so, set forth the same particularly, and at large.

Answer. That he and one Span were employed by the said late Robert Stark to explore those parts of the country in which the said tract of land is situated; that the said land was the first that was improved in that part of the country, and that it was settled at a considerable expense to the said late Robert, as it was at least twenty miles from any other settlement, and every article necessary for the establishment was at the time difficult to obtain and very dear. And further this deponent saith not.

*Moses Johnson's deposition, No. 2.*

Interrogatory 1. Did you know the said Robert Stark in his lifetime; and if so, at what time, and how long did you know him?

Answer. That he was well acquainted with the late Robert Stark; that he became acquainted with him at the place called the Ridge, in South Carolina, about the year 1788, '89, or '90, from which place this deponent and the said Robert came in company to the Mississippi territory; that upon their arriving this deponent took charge of ten of the said late Robert Stark's slaves in the character of overseer, in which capacity he served the said Robert for four years.

2d. Have you any knowlege of the said Robert Stark holding and possessing a certain tract of land lying on the bayou Sara creek, in the Mississippi territory, containing two thousand acres of land, or thereabouts, under a grant under the Spanish government?

Answer. That he does know that the said late Robert Stark, deceased, did hold and possess a tract of land, lying on the bayou Sara creek, in the Mississippi territory, containing 2000 acres or thereabouts, for which the deponent understood and believes the said Robert Stark had a grant from the Spanish government.

3d. How long did the said Robert Stark occupy and cultivate the said tract of land; and did you or did you not superintend the same for him? If so, say at what time, how long, how many acres were cleared, and how many crops were made thereon.

Answer. That the said late Robert Stark occupied and *and* cultivated the said tract of land for three years; that this deponent having been employed as an overseer, and ten of the said late Robert Stark's slaves committed to his charge, he superintended the clearing and cultivation of the said tract of land for the said Stark during that time; that there was, as well as this deponent can recollect at this distant date, between twenty-five and fifty acres of the land cleared, enclosed under good fence, and cultivated the two last years.

4th. Was or was not the said tract of land surveyed for the said Robert Stark by William Atchison, deputy surveyor under the Spanish government, some time in the first part of the year that the deponent resided on the said tract of land, and after some improvements had been made?

A. He thinks in the year 1791 or 1792 as he, this deponent, was one of the chain carriers; the deponent further saith that, after leaving the said tract of land, his residence for the next four years, within about six miles of the said tract, and being in the neighborhood, he frequently visited the said tract of land; that after he had left the said place, James Mather sent two men to take possession of it, who also took possession of and used about three hundred barrels corn which this deponent left on the place in cribs; the deponent knows that those men were sent by the said James Mather, as they told this deponent so, and as he knows that the said Mather furnished them with meat, horses, and farming utensils.

5th. Do you know any thing further material to the complainants in this cause? If so, set forth the same particularly and at large.

Answer. That he and one Esslan were employed by the said late Robert Stark to explore that part of the country in which the said tract of land is situated; that the said tract is the first that was settled in that part of the country; and it was settled at a considerable expense to the said late Robert Stark, as it was at least twenty miles from any other settlement, and every article necessary for the establishment was at that time procured with difficulty and at high prices.

*Cross interrogatories.*

Interrogatory 1. If you know the said Robert Stark mentioned in complainants' interrogatories, when and at what time did he first come into the district of Natchez, or within the jurisdiction of the Spanish

government; how long did he remain in said district; and when and at what time [did] he return to the country under the jurisdiction of the United States?

Answer. That he cannot be particular as to the year in which the late Robert Stark removed to the Mississippi territory, but to the best of his knowledge it was in the winter of the year 1788, '89, or '90; that the said Stark, when he first arrived in the district of Natchez, rented a plantation on Cole's creek, where he resided and made several crops, the deponent superintending for him the first year; after which this deponent returned to Carolina, and attended the wife and the rest of the white family of the said Stark to the district of Natchez; and soon after the deponent's second arrival in said district, went down in company with the said Stark, and took possession of the plantation on bayou Sara creek. The deponent further saith, that he cannot distinctly recollect the date at which the said Robert Stark removed from the district of Natchez, but to the best of his recollection it was in the year 1797 or 1798; that the said Stark sold his negroes and vested their proceeds in cotton, which he shipped to some port of the United States, and went himself by land; that the wife of the said Robert Stark and his daughter returned to the United States in the vessel in which the cotton was transported, as this deponent understood; but that their two sons, Theodore and Horatio, remained in the district of Natchez.

Interrog. 2d. If you know anything of the said Robert Stark holding the said tract of land mentioned in complainant's interrog's under a grant from the Spanish government, state what kind and description of grant, by whom signed or issued, and whether, when, and where you ever saw such a grant, and what was the purport thereof.

Answer. That of the grant from the Spanish government to the said Robert Stark he speaks only from information; that the said Stark informed this deponent he had a grant from the Spanish government for the said tract of land, and that he knew there was an intimacy between the said Stark and the late Governor Gayoso; this deponent has reason to believe a grant was obtained, but of what nature or description the deponent cannot say, as he does not recollect to have seen it.

Interrog. 3d. How long was the said Robert Stark in possession of the said tract of land, and for what reason did he abandon the same; did he ever inform you that he intended to abandon said tract of land; or what did he inform you, or others in your hearing, on this subject?

Answer. That he did not recollect ever to have heard the said Robert Stark give any reason for removing his negroes from the plantation in question; nor does he know that he intended finally to abandon it.

Interrog. 4th. Did not the said Robert Stark abandon said tract of land and leave the country, and at what time?

Answer. That he has replied as fully on this interrog. as it was in his power to do, in his answer to the first and third cross interrogs.; and further this deponent saith not.

*Moses Johnson's deposition No.* 3.

Interrog. 1st. Do you remember the precise time when you quitted the plantation in dispute between the plaintiffs and defendants; was it or was it not some months before you ever saw James Mather?

Answer. That, as far as he can recollect, your deponent quitted the plantation in April, about the year 1793, and that it was before he left the plantation your deponent saw and conversed with Mr. Mather, defendant, at his, the deponent's, house, and that this was the only time he ever saw the defendant to the best of his recollection.

Interrogatory 2d. Do you know why Colonel Stark left said plantation? Was it or was it not on account of some difficulty or difference that had arisen between him, the said Stark, and Governor Gayoso, occasioned by the complaint of a person who considered himself ill used by the said Colonel Stark.

Answer. That there did arise a difference between Colonel Robert Stark, the complainant's father, and Governor Gayoso, and he believes it originated from the complaint of an individual, and this was the reason why Colonel Stark abandoned his plantation.

Interrogatory 3d. Had or had not the said Colonel Stark been appointed by Governor Gayoso a syndic, or justice of the peace, for the district in which he resided, with power to take cognizance of any matters in dispute between the inhabitants in said district; and was not the dispute between the Governor and Colonel Stark occasioned by some improper conduct in office of the said Stark; and was or was not this the cause why said Stark abandoned the settlement and took off his negroes and cattle; and was it or was it not at the time that you quitted the said plantation?

Answer. That he has no knowledge that Colonel Stark ever held any office under the Spanish government.

Interrogatory 4th. Do you or do you not recollect a conversation that took place between yourself and James Mather, after the arrival of the said James Mather at Natchez; and did not the said James Mather tell you that on his way up he had been informed that Colonel Stark had abandoned said plantation or tract of land; and that he, James Mather, had been advised to ask for a grant of the same land, (it being then vacant;) and did or did not the said James Mather say to you that he intended to ask it of the government, but he would not if Col. Stark still chose to hold it; and did or did not the said James Mather request you to convey this communication to said Stark?

Answer. That he can answer nothing, as he has no recollection of any circumstance therein contained.

Interrogatory 5th. Did or did you not communicate with the said Stark on the subject of his still wishing to hold the said land; and did or did you not bring for answer that James Mather might ask for the land, as Stark had abandoned the same, and would not live under the laws of the country (meaning the Spanish laws) for all the land in it?

State particularly what said Stark replied to you, and what you said to said Mather.

Answer. That he had conversed with said Colonel Stark after he had abandoned the said plantation, and desired the said Stark to surrender it to him, and said Colonel Stark refused to substitute him in his right and interest in said land, and declares that said Stark said he was determined not to live under the Spanish government, and moved his family out of the limits and control of said government.

Interrogatory 6th. Did you or did you not at the same time, or shortly after, apply to said Mather for a part of the same tract? State all you know relative to the before mentioned tract of land beneficial to the said Mather.

Answer. That he never applied, as well as he can recollect, to the defendant, Mather, for a part of the tract of land; and this is all the information he is possessed of that could at all assist either of the parties in the suit, but what is already disclosed in his several depositions on the part of plaintiffs and defendants.

*Mather McCulloch's deposition.*

That some time in the summer of the year 1794 he was present, in company with Governor Gayoso, Colonel Robert Stark, and James Mather, at the government house in Natchez, when a conversation happened between said Gayoso and said Colonel Stark, in presence of the deponent and said James Mather, about land, in which conversation Colonel Stark said to Governor Gayoso that he would give up his settlement on a tract of land on the waters of bayou Sara, in the present county of Wilkinson, provided he, the said governor, would give him another tract of land in the same neighborhood, which he had found. After a pause of a minute, perhaps, the governor turned round to said Mather, and said that, as he, Mather, had been applying for land, this was a fine tract, and he might have it, alluding to the tract which Colonel Stark proposed to exchange; whereupon the said Colonel Stark said, "governor, observe, I do not mean to relinquish my settlement, unless you give me the land which I have found first." The governor then said to Colonel Stark, that he was a discontented old man. Colonel Stark then spoke to the said James Mather, and told him he had better look for another place or tract of land, as he should not give up his said claim; Mr. Mather made no reply, but shrugged up his shoulders. The deponent further saith, that at the time of said conversation, said Colonel Robert Stark had been some years in possession of the land in question, and had made thereon considerable improvements—several cabins, and about forty or fifty acres of cleared land—and continued in possession until it appeared he was driven off.

*Mather McCulloch's deposition, No. 2.*

That some time in the summer of the year 1794, as he believes, he

was present in company with Governor Gayoso, Colonel Robert Stark, and James Mather, at the government house at Natchez, in a conversation which happened between said Governor Gayoso and Robert Stark, in presence of deponent and said James Mather, about land; in which conversation said Colonel Stark said to the said Gayoso that he would give up his settlement and tract of land on the waters of the bayou Sara, in the present county of Wilkinson, provided that *the* the said governor would give him another tract of land in the same neighborhood, which he had found. After a pause of a minute, perhaps, the governor turned round to said James Mather, and said that, as he, Mather, had been applying for land, this was a fine tract, and he might have it, alluding to the tract which Colonel Stark proposed to exchange; whereupon the said Colonel Stark said, "governor, observe, I do not mean to relinquish my claim and settlement, unless you give me the land I have found." The governor then said to Col. Stark he was a discontented old man. Col. Stark then spoke to James Mather, and told him that he had better look for another place or tract of land, as he should not give up his said claim; Mr. Mather made no reply, but shrugged up his shoulders. The deponent further says, that at the time of the said conversation said Col. Stark had been some years in possession of the land in question, and made thereon considerable improvements—several cabins, and cleared about forty or fifty acres of land—and continued in possession until it appeared he was driven off.

*Eben'r Rees' deposition.*

That he knew the defendants upwards of twenty years, and that he well knew that the said James and George Mather were connected in business; that George Mather was at Natchez previous to April, 1803, and heard him in conversation with the late William Dunbar, deceased, on the subject of the land in question, and in that conversation it appeared that he was acting as agent of James Mather, one of the defendants, and that George Mather mentioned the law suit which was then pending or before tried; and the deponent further saith, that he heard the said George Mather say, that the said tract of land now in controversy was granted to his brother James, and that the said Col. Robert Stark did not approve of the transaction, and that he deemed it an arbitrary and an unjust act in the governor to deprive him of lands on which he was urged and solicited to accept, and in all respects complied with the true intent and meaning of the law and usages of the Spanish government.

*John Hart's deposition.*

Interrogatory 1. Are you acquainted with the parties complainants, to wit, Theodore Stark and others, and the defendant, James Mather, of the State of Louisiana?

Answer. I know Theodore Stark, and have some acquaintance with Mr. Mather, but do not recollect his given name.

Interrogatory 2d. Had you or had you not some conversation with James Mather, about the year 1793, relative to a tract of land situated in Wilkinson county, on the bayou Sara, which he, the said James, informed you he was endeavoring to procure from Governor Gayoso and the Spanish government?

Answer. Yes, I had with a Mr. Mather, believed to be James Mather.

Interrogatory 3d. Did not said Mather call at some house on his way up and down to Natchez, at the period he said he was applying for said tract of land?

Answer. Mr. Mather called at my house on his way to his plantation.

Interrogatory 4th. Did he not inform you that Col. Robert Stark claimed the said tract by a previous concession from the Spanish government?

Answer. He did.

Interrogatory 5th. Did he not confess that the said Col. Robert Stark persisted in adhering implicitly to his claim to said tract, and that he, the said James, and Col., had a serious quarrel about the matter?

Answer. Yes, he did.

Interrogatory 6th. State all and every circumstance that the said James Mather told you about the subject, and relative to what he admitted had occurred in the progress of his applying for the land.

Answer. Mr. Mather told me that when he applied to the Spanish governor for a tract of land, the Spanish governor then presented and offered him said tract of land as one that had been given up by Col. Stark; but when Mather called upon Col. Stark, he refused to give up the title to the said tract of land; and, also, George Mather always blamed the Spanish Governor Gayoso for offering a tract of land that had been granted to Col. Stark.

*Cross interrogatories.*

Interrogatory 1st. If you had any conversation with James Mather respecting the tract of land in controversy, did not the said James Mather inform you that Col. Stark had abandoned said tract of land with a determination to quit the government and country; and what further did the said James Mather inform you on that head?

Answer. Mr. Mather told me that the Spanish governor informed him that Col. Stark had abandoned the said tract of land.

Interrogatory 2d. At what time did the said Robert Stark come into the Spanish government, and when and how long did he occupy the land in question, and when did he abandon or give up the land in question, and when did he leave the country, and when did he return?

Answer. I know nothing about it.

Interrogatory 3d. What reason did the said Robert Stark assign for abandoning said tract of land, and leaving the Spanish government?

Answer. I don't know.

Interrogatory 4th. How long has said Mather, and those claiming under him, been in possession of said tract of land?

Answer. I don't know.

Interrogatory 5th. Did not said Col. Stark frequently declare that he had abandoned said tract of land, and would quit the country; or what other were his declarations on that subject?

Answer. No; I never heard him declare any thing on the subject.

Interrogatory 6th. At what time did the said Colonel Stark return to the country under the American government, and how long was he absent therefrom?

Answer. I can't tell, having no knowledge of it.

Interrogatory 7th. What further do you know favorable to the claim of the defendants? Relate fully.

Answer. I know nothing else favorable to the claim of the defendants.

*James Williams' deposition.*

Interrogatory 1st. Do you know the complainants and defendants in the above case, and did you know Robert Stark, the elder, and Geo. Mather, brother of said James Mather, in their lifetime?

Answer. I knew Robert Stark and James Mather and George Mather, the elder.

Interrogatory 2d. Were you in the employment of the said James Mather some years since as an overseer or superintendent of his plantation and negroes, on the land now in controversy between the parties, lying on the bayou Sara, and containing 2,000 arpens?

Answer. Deponent says he was.

Interrogatory 3d. Had you a conversation with the said James Mather during the time you were in his employment, or at any other time, respecting the said tract of land which was claimed by the said Robert Stark, the elder; if so, did or did not the said James Mather say that the reason that he, Mather, did not proceed to made an extensive improvement thereon was, that the said Robert Stark, the elder, had a claim to the said tract of land, and that he, Mather, expected it would be recovered from him by the said Stark, or words to that effect? State fully all that passed between you in that conversation, and say about what time it took place.

Answer. About the 3d of December, 1795, I took possession of the tract of land now in dispute for James Mather, and in the course of the year had a conversation with James Mather respecting the title to this land, wherein he said, as nearly as I can recollect, as follows, that he had gone to Natchez some time before, and hearing of the fertility of the bayou Sara lands he (the said James Mather) applied for some to Governor Gayoso; the governor told him "here is a tract of land that has been just given up by Mr. Stark, from character it is one of the finest on bayou Sara; you had better take it. Mr. Mather agreed to take it; after receiving it he became doubtful of the title, and requested the governor to oblige Mr. Stark to give up the *requet* and survey of said

tract; the governor called upon Mr. Stark (Colo.) to do so, who refused.

Interrogatory 4th. Was George Mather, the elder brother of said James, present at the above conversation, or any other time when the said Robert Stark's claim to said land was spoken of in your presence?

Answer. I believe he was not present, but I afterwards had a conversation with George Mather himself, as follows, who said he had become the proprietor of the 2000 arpens; that they had had one suit, and that the decision of it had been in his favor, and that he did not regard the claim of Stark.

Interrogatory 5th. Do you know anything more material to the complainants in the above cause? If so state it fully and at large.

Answer. I do not recollect any other circumstance, other than this, that when I took possession of it, as stated above, the land appeared to have been cultivated and about two crops made, and they were said by Mr. James Mather to have been made by Col. Stark.

*James Williams. Deposition No. 2.*

Interrogatory 1st. Do you know complainants and defendants in the above cause, and did you know Robert Stark, the elder, and George Mather, brother of said James Mather, in their lifetime?

Answer. I know Boleny Stark, Robert Stark, Theodore Stark; and knew Robert Stark, the elder, in his lifetime; I knew George Mather, the elder, and knew James Mather, and George Mather, the younger.

Interrogatory 2d. Were you in the employ of the said James Mather some years since as an overseer or superintendent of his plantation and negroes on the land now in controversy?

Answer. I was.

Interrogatory 3d. Had you a conversation with the said James Mather during the time you were in his employ, or at any other time, respecting the said tract of land, which was claimed by Robert Stark, the elder? If so, did or did not the said James Mather say that the reason that he, Mather, did not proceed to make an extensive improvement thereon was, that the said Robert Stark, the elder, had a claim to the said tract of land, and that he, Mather, expected it would be recovered from him by said Stark, or words to that effect? State fully all that passed between you in that conversation, and say about what time it took place.

Answer. About the 3d December, in the year 1795, I took possession of the tract of land now in dispute, as overseer for James Mather, and in the course of the year following I had a conversation with James Mather respecting the title to this land, wherein he said, as nearly as I can recollect, as follows, viz., that he had gone to Natchez some time before, and, hearing of the fertility of the bayou Sara lands, he applied for some to Governor Gayoso; the governor told him, there is a tract of land that has been just given up by Mr. Stark; from character it is one of the best on bayou Sara; you had better take it. Mr. Mather

agreed to take it. After receiving it, he became doubtful of the title, and requested the governor to oblige Mr. Stark to give up the requête and survey of said tract. The governor called upon Mr. Stark (Colo.) to do so, who refused. From conversation with James and George Mather, I am impressed they were both concerned, and that each of them claimed one thousand acres of said tract.

Interrog. 4th. Was George Mather, the elder brother of said James, present at the above conversation, or at any other time, when the said Robert Starke's claim to said land was spoken of in your presence?

Answer. I do not know that he was. The conversation above mentioned took place before any decision had taken place. Since the decision at Natchez, George Mather, the elder, called upon me, and stated that he expected to be again sued by the heirs of Col. Stark, and wished me to state what I knew on the subject. I did so, when he said "it would be rather against me than for me. I have had one decision in my favor, and do not regard the claim of Stark." Previous to this conversation, he had stated that he had become the proprietor of the whole two thousand acres.

Interrog. 5th. Do you know anything more material for the complainants in the above case? If so, state fully and at large.

Answer. I do not know that I do.

*Cross interrogatories.*

Interrog. 1st. Where is your place of residence, and where has it been for some years past?

Answer. I live on Alexander's creek, in the parish of Feliciana, State of Louisiana, where I have resided for the last sixteen or seventeen years.

Interrog. 2d. What length of time were you employed by James Mather as an overseer, and where was James Mather's place of residence during that time?

Answer. I was employed two years; he then lived about seven leagues above New Orleans.

Interrog. 3d. At what time were you acquainted with George Mather, and where was his place of residence?

Answer. In the year 1795. He lived in the same place James Mather did.

Interrog. 4th. Were you ever acquainted with Col. Robert Stark; if so, at what time, and where did he reside?

Answer. I was acquainted with him in South Carolina, where he resided, at a place called "Fair Hill," in Elizabeth county, upwards of thirty years ago.

Interrogatory 5th. At what time did Col. Starke leave the then district of Natchez, and when did he return?

Answer. I do not know.

Interrogatory 6th. If James Mather ever had any conversation with you of the nature inquired of in complainants' 3d interrogatory, state particularly the expressions used by the said James Mather; when and

on what occasion such conversation happened; whether you are certain George Mather was present, and what reply he made; and to whom did you first communicate such conversation.

Answer. I have stated [the] conversation, as perfectly as I can, in my answer to the complainants' 3d interrogatory; I do not recollect whether there was any person present at the said conversation; it took place at his plantation, on the coast, and in New Orleans; I believe I first communicated the conversation to Mr. Theodore Stark; when James Mather took away his hands from said place, I asked him whether he intended still to cultivate it; he said he did not, in consequence of the claim of Col. Stark; I think that he said Col. Stark threatened him with a suit for the land.

Interrogatory 7th. How often have you been called on as a witness in said trials in Wilkinson county, and about how many affidavits and depositions have you made in such trial or suit?

Answer. I am one of the first settlers in this part of the bayou Sara country; in consequence, have been frequently called on as a witness; I don't recollect how many affidavits or depositions I have made.

Interrogatory 8th. What is your usual occupation and employment?

Answer. I am a farmer.

*Samuel Pastlethwait's deposition.*

Interrogatory 1st. Do you know the parties in the above case, or either of them?

Answer. I do.

Interrogatory 2d. Are you not one of the executors of the late William Dunbar?

Answer. Yes.

Interrogatory 3d. Was or was not the said William Dunbar the surveyor of the district of Natchez, then so called, during the Spanish government?

Answer. I believe he was.

Interrogatory 4th. Have you or have you not found, on examining the books of the said William Dunbar, entries in his handwriting of certain moneys paid by Robert Stark for surveying fees? If so, be pleased to state to whom the same is stated to have been paid, the quantity and description of the land surveyed, the amount paid by said Robert Stark, and particularly set forth the day and year in which the payments were made.

Answer. On examination of the books of the late William Dunbar, in a list of surveys paid and settled, in account with Atchinson, previous to the month of December, 1792, "I find the name of Robert Stark paid, in part 2,000 arpens, $514;" and, in another list of surveys, fees received since the month of December, 1792, up to July, 1794, "there appears the name of Robert Stark, with these words annexed, 'in full balance, $49 4.'"

*John Minor's deposition.*

Question by defendants' counsel. What was the character of Atchinson, deputy surveyor under William Dunbar.

Answer. Deponent was well acquainted with him, and believes him to have been a man of truth and veracity, and such was his character.

*John Hutchins's deposition.*

Says that he is acquainted with the defendant, James Mather, and was acquainted with Robert Stark in his lifetime; that he has been acquainted with James Mather about twenty-seven years, during the time he has known him to reside in Louisiana; that he was also acquainted with Robert Stark during the existence of the Spanish government in the district of Natchez; and that the said Robert Stark removed from this country with his family during the existence of the Spanish government, and did not return until after the Americans took possession; he further states, that when the said Robert Stark was about to remove from this country, he sold his property and purchased a number of horses to take with him, which horses he kept on a small plantation on the Mississippi bluff, then belonging to deponent's father, the late Anthony Hutchins, where he, the deponent, was in the habit of going on business for his father; and he recollects on one occasion, in company with the said Stark and several other persons, he heard the said Stark say, he had disposed of all his property and would leave the government; he, the said Stark, was then asked what he would do with his land, and his answer was, that he had abandoned it, and would not hold land under such a damned government, alluding to the Spanish government; some short time after that, the said Robert Stark left the country.

Question. Was the conversation, above alluded to, with yourself or others?

Answer. I do not recollect whether the conversation was immediately with myself or others present; think it probable it was not directed to me.

*P. King's deposition.*

*Joseph Vidal's deposition.*

Interrogatory 1. Did you know George Mather, brother of James Mather, and when did you become acquainted with him?

Answer. I became acquainted with George Mather in the year 1795.

Interrogatory 2d. Do you know whether the said George Mather, previous to April 1803, lived with James Mather, transacted business for him, or was in any manner connected with said James Mather in business or property of any kind?

Answer. Deponent knows that said George Mather, previous to April 1803, was living on the plantation of Mr. James Mather, his brother;

transacted business for him, and it appeared to deponent that he was connected in business with his said brother.

Interrogatory 3d. Do you know, or have you heard, of a law suit that was depending between Col. Robert Stark and Mr. James Mather, about the year 1802, concerning a tract of 2000 arpens of land on the bayou Sara? If so, do you know of the said George Mather being at Natchez attending to the suit on behalf of his brother James?

Answer. I know of a suit that was depending some time ago between Colo. Robert Stark and Mr. James Mather; and I was acquainted with [the] circumstance of the said George Mather coming up to Natchez in 1802 or 1803, or thereabouts, to attend to said suit in behalf of his said brother James.

Interrogatory 4th. Did you ever hear the said George Mather speak of a suit or a controversy existing between his brother James and the said Colo. Stark, respecting the aforesaid tract of land, at any time previous to April, 1803?

Answer. That I don't recollect that the said George Mather and myself had any conversation respecting the said tract of land.

Interrogatory 5th. Do you know of any circumstance which induces you to believe that George Mather, previous to April, 1803, had any knowledge or information that Col. Stark had any claim to said tract of land on the bayou Sarah, which was held by his brother James? If so, state what those circumstances were.

Answer. Deponent refers to his 3d interrogatory for all the knowledge he had on the subject.

*Prosper King's deposition.*

Interrogatory 1st. Do you know the complainants or defendants in the above case, or either of them; and did you know Robert Stark, the elder, in his lifetime?

Answer. I knew Robert Stark in his lifetime; I also knew Theodore Stark and Horatio Stark; I do not know any of the other parties in said suit.

Interrogatory 2d. Did you know or understand that Robert Stark, the elder, was ever put in the calaboza, by Governor Gayoso? If so, state at what time, and what was the cause of the confinement.

Answer. I understood that Robert Stark, the elder, was confined in the calaboza by Gayoso, about the year 1794 or 1795; the cause of his confinement, I understood, was because he refused to relinquish his claim to a large tract of land on the waters of the bayou Sara to a certain gentleman in New Orleans.

Interrogatory 3d. Do you or do you not know and believe, and was it not generally understood and believed, the confinement of the said Robert Stark was in consequence of a dispute with said Governor Gayoso, that the said Robert Stark refused to surrender his title to a tract of land on the waters of the bayou Sara? If so, state all you know relative to that transaction.

Answer. I have answered this interrogatory in my answer to the second interrogatory.

Interrogatory 4th. Do you know any thing more material for the complainants in the above cause? If so, state fully and at large, as if you were particularly interrogated thereto.

Answer. I know nothing more than I have before stated.

*Cross interrogatories.*—Cross interrogatories.

Interrogatory 1st. At what time did Robert Stark, the elder, first arrive in this country, during the existence of the Spanish government; how long did he reside in this country under said government, and about what time did he leave it?

Answer. Robert Stark, the elder, arrived in this country about the year 1790, and continued in the country until about the spring of the year 1796, when he left it.

Interrogatory 2d. Do you or do you not know that said Robert Stark, the elder, abandoned the lands which he had taken up under the Spanish government when and before he left the country?

Answer. I have heard Robert Stark, the elder, complain that the Spanish government of this district had taken his lands from him, but I never knew that he abandoned the said lands.

Interrogatory 3d. Is it or is it not known to you that said Robert Stark, previous to leaving the country when under the Spanish government, cursed both the lands and the government, and swore he would have nothing further to do either with the lands or government, or words to that effect, or to what other effect?

Answer. It is not.

Interrogatory 4th. When did said Robert Stark again return to this country, after abandoning it as above stated?

Answer. About the year 1799.

*S. Lewis's deposition.*

Seth Lewis's deposition.

Interrogatory 1st. Do you know the parties in the above cause, or any, and which of them?

Answer. That he is unacquainted with any of the complainants, except Theodore Stark, whom he hath always understood to be a son and one of the heirs of Robert Stark, deceased; and that he knows James Mather, one of the defendants, and was acquainted with the other, George Mather, in his lifetime.

Interrogatory 2d. Did you preside as judge of the Mississippi, in the district court of the district of Adams, held at Natchez, over the trial of an action of ejectment for 2,000 acres of land, on the waters of the bayou Sara, between Robert Stark, lessee, and one Stotts, tenant in possession of James Mather?

Answer. That, whilst he held the office of chief justice of the Mis-

sissippi territory, he did preside at the trial of an action of ejectment, which he believes to be the same that is mentioned in the interrogatory, though the name of the tenant in possession in his notes is written Stotts, and not Scotts.

Interrogatory 3d. Were or were not Samuel Hutchins, Anthony Hutchins, and William Atchison, introduced and sworn as witnesses in that trial on the part of the defendants?

Answer. That he finds the names of Anthony Hutchins, Samuel Hutchins, and William Atchison mentioned in his notes as witnesses called and examined in the trial of the said cause; and, from the order in which they are mentioned in his notes, he believes they were called and examined for the defendant; though he cannot be positive as to this; he well recollects that the Atchison here spoken of was formerly a deputy surveyor under the Spanish government.

Interrogatory 4th. Have you not understood and been informed, and do you not believe, the said witnesses, and each of them, have departed this life?

Answer. That he hath been informed, and believes, that all the said witnesses are dead.

Interrogatory 5th. From the best of your recollection and belief, what did said witnesses, and each of them, depose on said trial, either on their principal or cross examination? Please state fully and at large.

Answer. That, while he was acting in the office of judge above mentioned, it was his practice to take notes of such parts of the evidence given, and proceedings had, in cases tried before him, as appeared to him to be material, especially in cases of importance; that, on examining his papers, he found he had taken and had preserved such a note of the evidence given, and proceedings had, in the cause in question; an exact and true report of which is contained in the following statement as nearly as his memory, aided by his said notes, enables him to make it out, to wit:

STARKS' lessee
vs.
STOTTS.

Ejectment for 2,000 acres of land.

The plaintiff produced and showed a warrant of survey of the premises in question, dated the 29th December, 1791, which had been obtained, and petition dated 20th September, and recommended by Governor Gayoso on the first of October of the same year. It was then suggested that the land had been surveyed by William Dunbar, deputy surveyor under the late Spanish government, but never returned to the surveyor general, nor certified by him; and they offered to prove this survey by the deputy who was present; but this evidence was rejected, and per curiam, the act of the deputy is the act of the principal; but, in this case, is incomplete until sanctioned by him; it

is then as if no survey had been made, and the evidence would be vain and could not affect the title, *first* this part was reserved.

William Dunbar, the deputy surveyor above mentioned, being examined as a witness, deposed, his authority as such under the Spanish government, was to certify his proceedings as such to the surveyor general only, and not to the governor, and that no patents issued on any but the certificates of the surveyor general; that it was always considered that [a] patent was necessary to complete a title, and that the late auditor once gave it as his opinion that a younger patent would take place of an elder warrant of survey. He further deposed that the plaintiff had been in possession of the premises.

Major Minor, another witness examined in the trial of the said cause, deposed that a warrant of survey, under the Spanish government, was only the commencement of the ceremony of titles; that patents were always issued, and were essential to a good title, and that lands could not be sold or disposed of by will without a patent.

Anthony Haggett, another witness examined in the trial of the said cause, deposed that he had sold lands by a warrant of survey without a patent, and that he had held his right which he had by assigning the warrant. This defendant then showed and relied on a patent of the premises granted to James Mather, and dated 3d of April, 1794.

Anthony Hutchins, another witness called and examined in the trial of the said cause, deposed that he was intimate with the plaintiff, Stark, at the time he was on the land in question, and often heard him say he did not like the land; that once he called on him, and told him he had offered to exch. (here a word is contracted in the deponent's notes, so as to leave the same somewhat obscure; but, on mature reflection, he is convinced that the word written in a contraction is "exchange," and the meaning that he had offered to exchange the premises for other lands,) but that Gayoso had refused, and he was angry; that some time afterwards he told him he had left the premises, and would never return to live on it, but only to take care of his corn; that he (the witness) advised him to keep it, but he persisted, declaring he would leave the country and never return, and did go.

Samuel Hutchins, another witness called and examined in the trial of the said cause, deposed, that Stark, the plaintiff, improved another place, and said he would give up the premises in question, and advised the witness to take it up.

William Atchinson, another witness called and examined on the trial of the said cause: That on finding out the premises in company with Col. Ozmun, for whom he had some surveying to do, Stark, (the plaintiff,) told him [not] to survey this land for him, for he had written to the governor to surrender it.

The court in their charge to the jury said that the plaintiff's title depending on a warrant of survey alone did not amount to a legal title, and could not prevail against a complete patent; that it was proper for them to consider the evidence rebutted to the plaintiff's having given up possession, and if they found he had, it was a circumstance tending

still further to revoke his title. The deponent further saith, whether any other material evidence was or was not given on the trial of the said cause, neither his notes nor his memory at this distance of time enable him to say.

Interrogatory 6th. Was or was not the plaintiff permitted on said trial to give evidence of any equitable or alleged equitable title he might have to the premises then in controversy?

Answer. That he hath no knowledge of the matters contained in the interrogatory further than he has already answered.

Interrogatory 7th. Do you know any thing further beneficial to the defendants in this suit? If so, relate the same fully.

Answer. That he does not recollect any thing further.

*S. Lewis, cross interrogatories.*

Cross interrogatories.

Interrogatory 1st. Was the said William Atchinson introduced a witness on behalf of the defendant on the trial of the said action of ejectment; and did or did not the said Atchison testify that he surveyed the land in question originally for Robert Stark; and that afterwards, some time previous to the year 1795, an order of survey was obtained by James Mather from the Spanish government for the same land; and that he, then said Atchison, went round the land with George Mather, brother of said James, who acted as agent for his said brother James, and shewed him the lines which he had run in the original survey made for the said Robert Stark.

Answer. That he hath already answered this interrogatory as fully as he hath any knowledge of the subject thereof in his answer to the foregoing direct interrogatories.

Interrogatory 2d. Did or did not the said Atchison state that George Mather acted as the agent of his brother James in ascertaining the boundaries of the said land, and taking possession thereof, after Robert Stark was dispossessed?

Answer. That he does not recollect, nor has he noted any such evidence.

Interrogatory 3d. Was the said Anthony Hutchins introduced by the defendant in this said ejectment case, to prove, amongst other things, a conversation which took place between Robert Stark and himself previous to said Stark's leaving the country, respecting the said land; and did or did not said Hutchins testify, that, in said conversation with said Robert Stark, *that* he advised said Stark not to leave the country, as he would be coming back afterwards with his wallet on his back; and that Stark's reply was, that the commandant or governor had taken his land from him and put him in the calaboza, and that he could not or would not live under such a damned government, or words to that effect?

Answer. He recollects there was some evidence of a quarrel or difference between the deceased, Stark, and Governor Gayoso, but no

having noted it, cannot now recollect the particulars of it. He believes that at the time he considered it immaterial, and therefore did not note it. In other respects he saith that he hath already answered this interrogatory, as far as he hath any knowledge of the matter.

Interrogatory 4th. Did you know George Mather, brother of James Mather; do you know whether he acted as the agent of his brother James, both in New Orleans and the Mississippi territory, at or previous to the trial of the said ejectment, or afterwards; do you know whether he acted as his brother's agent respecting the lands in question; whether he, the said George Mather, was present at the trial of said ejectment, or whether he was in the territory previous thereto, making preparation therefor?

Answer. That he knew George Mather, and thinks it probable that he might have acted as agent for his brother, George Mather, as supposed in the interrogatory, but is unable to say with certainty whether he did or did not; nor can he say whether he was present at the trial, or what part he might have taken in preparing the cause for trial.

Interrogatory 5th. Had you any conversation with George Mather respecting said land, and of the said Robert Stark's having a claim thereto any time previous to the 30th April, 1803; or do you know of any fact or circumstance to induce a belief that he, George Mather, had a knowledge that Robert Stark, or his heirs, had a claim to the land in question any time previous to the 30th of April, 1803? If so, state them fully.

Answer. That he has no recollection of any such conversation, nor of any fact or circumstance of the tendency supposed, unless the action of ejectment, which he believes was pending previous to the time mentioned, be considered as such.

Interrogatory 6th. On the trial of said ejectment, was or was not the principal, or one of the grounds of defence set up, that the lessor of the plaintiff, having only an equitable title, could not, by the rules of the common law, recover in an action of ejectment, particularly against one holding the legal title, but must resort to a court of equity; and was or was not the charge of the court in conformity with said rule of same?

Answer. That he has already answered this interrogatory in his answer to the fifth direct interrogatory as fully as he hath any knowledge of it, or recollection of the matter.

Interrogatory 7th. Did or did not the said William Atchison state, on his examination, that Robert Stark has paid him for surveying the said land for him, Stark, and what sum did he say he had so paid?

Answer. That he doth not recollect, nor has he noted any such evidence.

Interrogatory 8th. Do you know any thing more material for the complainants in the above cause? If so, state it fully and at large.

Answer. That he doth not recollect any thing further on the subject.

*M. Liston's deposition.*

Moreau Liston's deposition.

Interrogatory 1st. Are you acquainted with the law of the Spanish government respecting the grants of land made by that government; if so, what were the formalities to be observed in obtaining grants, particularly as to the requisites in order to ascertain whether the land was vacant or not, and in what manner the survey was to be made?

Answer. That for nearly the space of twelve years passed he has practised in the courts of this State; he has made the Spanish laws his particular study, and has had occasion to know the several ordinances made relative to concessions or grants of land under the government of the King of Spain. That, with regard to the formality required to obtain concessions of land under that government, and so establish the fact of the land being vacant or not, he cannot do better than to state the text of the Spanish ordinances on that subject. That, by the 12th article of the ordinances published by the governor, O'Rielly, 1770, it is declared: "That all concessions should be granted by the governor general in the name of the king, who should name, at the same time, a surveyor to ascertain the boundaries, as well of the front as the depth, in presence of the ordinary judge of the district, and two inhabitants, owners of adjoining property, to be present at the survey; that the said four persons should sign the process verbal when drawn up, and of which three copies should be made, one to be deposited in the office of secretary of the government and cabildo, one for the use of the governor general, and the third for the proprietor, to be annexed to the title of the concession."

That, by ordinance of Governor Gayoso de Lemos, of the month of January, 1798, article 17th, he directs the same formalities to be observed in obtaining concessions as had been established by the ordinances of his predecessors. That the King of Spain, having published, on the 22d October, 1798, an order, by which he withdrew from the governors of provinces the right or power to grant concessions, and invested it on the intendants of the same provinces, Don Juan Ventura Morales, the then intendant of Louisiana issued a similar order concerning concessions, on the 17th July, 1799, the fifteenth article of which is conceived in these terms: "All concessions will be granted in the name of the king by the intendant general of the province, who will order the surveyor general, or a deputy to be appointed by him, to make the survey and demarcation of the land, by ascertaining the boundaries, as well of the front as the depth; which operation shall be done in the presence of the commandant or syndic of the district, and of two neighboring planters; and said four persons shall sign the process verbal, which the surveyor shall draw up."

By the 16th article of the same ordinance it is declared: "That the aforesaid process verbal, with a certified copy of the same, shall be sent by the surveyor to the intendant's office, in order that upon the original may be written, with consent of the procurer fiscal, the requisite title.

Interrogatory 2d. Should a grant be made by the government, and it should afterwards be found that the land was not vacant at the time of the survey and grant, or that the formalities required to ascertain whether vacant or not had not been observed, would or would not the grant be deemed void by the laws of Spain, and the grant enure to the benefit of the person whose interest had been infringed on?

Answer. That he cannot answer positively to the queries contained in the same, which involve a point of law upon which the tribunals have not yet decided, that this witness knows of; but he verily believes, from his study of the Spanish laws and the ordinances relative to concessions, that the first grantee who possessed a title definitive and in due form, cannot be afterwards deprived of the same by the government in favor of the second grantee, unless the first had incurred the forfeiture of his tenure by having omitted or neglected to fulfil the conditions of the grant; that by law 30, title 18, article 3, it is declared that "if the king shall grant titles of privilege (or containing some benefit or) contrary to the rights of some particular person, as if they deprived such person without right or reason of what belonged to him, or caused some manifest damage to his person or property, such letters would have no force or effect, and would not be executed or enforced, until the party to whom they are addressed should have laid the circumstances before the king, and prayed him to make known for what reason he had ordered such letters to be put in execution; for it shall be supposed that, when the king was informed of the fact, he would not persist in ordering their execution; and by the law 31, same title, it is declared that neither the emperor, the king, nor any other sovereign, can grant letters of privilege contrary to natural right, and if they should, such letters would have no force; as, for example, in a case where the king should give by privilege to some person the property of another individual, who had done nothing to cause such privation, except indeed the king had occasion for the property for some object of public utility to his kingdom, but even then the owner of the property should be indemnified for the privation he so suffered, by payment of the value in money or other equivalent."

An original grantee may be despoiled of his property by its reversion to the royal domain, but only in cases foreseen and provided for by the ordinances. According to the 2d article of O'Rielly's ordinance of 1770, [no] such revision can happen, except in the cases which are expressed in these terms: "The grantees established on the banks of the river shall be bound to make in the three first years levees sufficient to protect the land from inundation, and ditches to drain off the water; they shall also keep in good order a highway of at least forty feet in width between the ditch within, and running along the levee and the fence, with bridges of at least twelve feet over the drains which crosses the highway; the said grantees are also bound to clear, within the said first three years of their possession, the whole front of their lands to the depth of two arpens; under case of non performance of these conditions their lands shall be reunited to the dominion of the king, to be

granted anew thereafter, and the judge of every place shall be responsible to the governor for his attention to this matter."

It seems, therefore, to this witness, that an original grantee could not be totally deprived of the land granted, but in consequence of having failed in the performance of some of those considerations, and that all positive concessions made without just cause of recession would be null, and what confirms this witness in the idea that the land in such case would be restored to the first grantee is the 32 article of the ordinance of the Intendant Morelles in 1799, which is expressed as follows:

"Concessions nor sales of any land shall, unless previously formal information has been received that they are vacant, and so avoid prejudicial errors, every one is informed that besides the signature of the commandant or syndic of the district, this information should be witnessed by that of the surveyor and two planters of the neighborhood of the land demanded; always provided, that if, notwithstanding this precaution, it should afterwards be found that said land had another owner who claimed the same, and that there was notice sufficient to restore it to him, the commandant or syndic, the surveyors and the planters, who signed the information, shall make good all damages to the party they have wronged.

Interrogatory 3d. If an order of survey should be made in favor of a person, and a settlement and improvement made thereon, agreeable to law, would or would not a subsequent grant to another person, by the government, be considered void; or would not the second grant enure to the benefit of the first settler?

Answer. That the preceding answer, to the second interrogatory, applies to the question herein contained.

Interrogatory 4th. Do you know any thing more material to the complainant in the above cause? If so, state it fully and at large.

Answer. That all he can state further on this subject is, that [the] ordinances herein before mentioned, of O'Reilly, Gayoso de Lemos, and Morales, were considered as law, and are still so considered in the courts of the State, relative to grants or concessions delivered under the Spanish government; and that the passages quoted have been faithfully extracted from authentic collections of the said ordinances now in possession of the witness, and within his view. And he further declares, that it was the custom of the Spanish government, on the first application for a concession, to issue an order for the surveying of the lands applied for, and upon receiving the survey, and plan annexed to it, the governor, or the intendant, as the case was, granted the definitive title; that is to say, the concession of the land.

*Thomas Calvit's deposition.*

Interrogatory 1. Do you know the complainants in the above cause; and did you know Robert, the elder, in his lifetime; and do you know James Mather; and did you know George Mather in his lifetime?

Answer. He is acquainted with some of the heirs of Robert Stark,

the elder; that he was intimately acquainted with Robert Stark, the elder, in his lifetime; and that he was also acquainted with James and George Mather.

Interrogatory 2d. Do you know of the said Robert Stark, the elder, obtaining from the Spanish government a grant for a tract of land on the waters of bayou Sara; and do you know of Governor Gayoso confining the said Robert Stark in the fort or calaboza, in order to compel him to give up the said tract of land so granted to him; and do you know that the said Stark refused *to*, and persisted in refusing, to give up or surrender said tract of land? State all you know on the subject.

Answer. That he understood, and does believe, that he, the said Robert Stark, did obtain from the Spanish government a grant for a tract of land on the waters of the bayou Sara. And further saith, that he understood, and does believe, that the said Robert Clark was confined in the fort in consequence of the displeasure of Governor Gayoso, but for what cause, or for what length of time, he does not know.

Interrogatory 3d. Do you know what time Robert Stark, the elder, left the Spanish government and returned to the United States?

Answer. That he believes the said Robert Stark left this country, then under the Spanish government, and returned to the United States in seventeen hundred and ninety-five or six, but which year he is not positive.

Interrogatory 4th. Do you know any thing more material for the complainants in the above cause? If so, state it fully and at large.

Answer. That he does not know or recollect any thing more.

*Thomas Cummins's deposition.*

Interrogatory 1st. Do you know the complainants and defendants in the above cause; and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he knew Robert Stark, the elder, in his lifetime, and that he now knows Theodore Stark and Colonel Horatio Stark; of the other complainants he has no knowledge; that he knows James Mather, one of the defendants, but is not acquainted with George Mather.

Interrogatory 2d. Did you know William Atchinson in his lifetime, and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. He knew William Atchison, but has not any knowledge of his testifying before the board of commissioners west of Pearl river, but from hearsay.

Interrogatory 3d. What was the general character of said Atchison as to truth and veracity; was he entitled to credit when testifying as a witness, and would you believe him when under oath from what you know of his character?

Answer. That from the general character of the said William Atchison, as to truth and veracity, he was not entitled to credit when testifying as a witness, and that he would not believe the said Atchinson when on oath.

Interrogatory 4th. Do you or do you not know that it was the custom under the Spanish government for persons obtaining lands under that government to pay the expense of surveying and completing the title thereto into the hands of the surveyor of the district?

Answer. That it was the custom to pay the money for completing the titles into the hands of the surveyor of the district, and that when the grants were completed they were forwarded to the district surveyor to be delivered to the person to whom the land was granted.

Interrogatory 5th. Do you know any thing more material for the complainants in the above cause? If so, state it fully and at large, as if you were particularly interrogated thereto.

Answer. That he knows that Robert Stark, the elder, was at great expense and trouble in exploring the bayou Sara country, and that the said Robert Stark purchased corn and bacon from this deponent for the use of his hands on his plantation, on the waters of the bayou Sara, which plantation was granted to the said Robert Stark; and that from the trouble and expense of the said Robert Stark with regard to this plantation, this deponent does not believe that he ever surrendered his title to the tract of land in question, but that it was taken from him, as he is informed and believes.

*Landon Davis's deposition.*

Interrogatory 1st. Do you know the complainants and defendants in the above cause; and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he knew Robert Stark, the elder, in his lifetime; and that he knew Theodore Stark, and Col. Horatio Stark; of the other complainants he has no knowledge; he knows the defendants.

Interrogatory 2d. Did you know William Atchinson in his lifetime; and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. He knew William Atchinson; it was reported that said Atchinson died in this country, which he does not believe; he does not know of the said William Atchinson being examined before the board of commissioners (west of Pearl river) but from report.

Interrogatory 3d. What was the general character of the said Atchinson as to truth and veracity; was he entitled to credit when testifying as a witness, and would you believe [him] when under oath from what you know of his character?

Answer. From the general character of the said William Atchinson, as to truth and veracity, he was entitled to credit when testifying as a witness, and he, the deponent, would believe the said Atchinson when on oath.

Interrogatory 4th. Do you, or do you not, know that it was the custom, under the Spanish government, for persons obtaining lands under that government to pay the expense of surveying and completing the title thereto into the hands of the surveyor of the district?

Answer. That it was the custom, under the Spanish government, for persons obtaining lands to pay the expense of surveying and completing the title thereto into the hands of the surveyor of the district.

Interrogatory 5th. Do you know anything more material for the complainants in the above cause? If so, state it fully and at large as if you were particularly interrogated thereto.

Answer. That he knows the said Robert Stark, in his lifetime, did obtain from the Spanish government a tract of land on the waters of the bayou Sara; that a few years after there was a dispute with the said Robert Stark and Governor Gayoso, and it was reported and believed that said Governor Gayoso confined the said Robert Stark in the fort or calaboza because the said Robert Stark would not surrender his title to the said tract of land; but in what year this confinement was made this deponent, at this distant time, does not recollect.

*Joseph Johnson's deposition.*

Interrogatory 1. Do you know the complainants and defendants in the above cause, and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he knew Col. Robert Stark in his lifetime, and that he knows Mrs. Sophia Gildart, Theodore Stark, esquire, Col. Horatio Stark, and Miss Elizabeth Stark; of the other complainants he has no knowledge; he knows the defendants.

Interrogatory 2d. Did you know William Atchinson in his lifetime, and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. That he knew a man by the name of Atchinson, who was surveyor under the Spanish government, but of his christian name he is not certain, but believes it was William. He further says, he saw on file or on record in the land office west of Pearl river some depositions made by the said Atchinson which were not true in some of their most material facts.

Interrogatory 3d. What was the general character of the said Atchinson as to truth and veracity; was he entitled to credit when testifying as a witness, and would you believe [him] when under oath from what you know of his character?

Answer. That, so far as he was acquainted with the character of the said Atchinson, as to truth and veracity, it was bad, and believes he was not entitled to credit when testifying as a witness, and that he would not have believed him when under oath.

*Samuel Stocket's deposition.*

Interrog. 1. Do you know the complainants and defendants in the above cause, and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he had no knowledge of the defendants, and that he had no knowledge of Robert Stark, the elder, but that he knew Mrs.

Sophia Gildart, Theodore Stark, esq., Col. Horatio Stark, and Miss Elizabeth Stark; of the other complainants he has no knowledge.

Interrog. 2d. Did you know William Atchinson in his lifetime, and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. That he knew a man by the name of William Atchinson, who was surveyor under the Spanish government; he further says, that he saw on file, or on record, in the land office west of Pearl river, some depositions made by the said Atchinson which were not true in some of their material points.

Interrog. 3d. What was the general character of the said Atchinson as to truth and veracity; was he entitled to credit when testifying as a witness, and would you believe [him] when under oath, from what you know of his character?

Answer. That so far as he was acquainted with the character of the said Atchinson, as to truth and veracity, it was bad, and believes he was not entitled to credit when testifying as a witness, and that he would not have believed him when under oath.

*Lewis Evans's deposition.*

Interrog. 1. Do you know the complainants in the above cause, and did you know Robert Stark, the elder, in his lifetime, and do you know James Mather, and George Mather in his lifetime?

Answer. That he did know Robert Stark, the elder, in his lifetime, and had some knowledge of James Mather, George Mather, and perhaps of both.

Interrog. 2d. Do you know of the said Robert Stark, the elder, obtaining from the Spanish government a grant of a tract of land on the waters of the bayou Sara; and do you know of Governor Gayoso confining the said Robert Stark in the fort or calaboza, in order to compel him to give up said tract of land so granted to him; and do you know that the said Stark refused, and persisted in refusing, to give up or surrender said land? State all that you know on that subject.

Answer. That he had no personal knowledge that Col. Stark obtained a grant of land from the Spanish government on the bayou Sara, but that he has no doubt but such was the fact, as all applicants who could have any pretensions to farming, on petition to Governor Gayoso for land were gratified; and Robert Stark, from his situation in life at that time, was not likely to form an exception to the rule so general.

He further says, that he knew Colonel Stark was confined in the "fort," and to the best of his remembrance Col. "P. B. Bruin and Col. Thos. Green" were also under an arrest at the same time, the latter [was] in the fort, the former at the house of the parish priest, and as the court-house for this city. The cause of their confinement at this distance of time he cannot particularly state, but believes it was caused by suspicion, that the parties above named were inimical to the

Spanish government, or had uttered language against its officers that had given offence to Governor Gayoso; a demand of withdrawing his claim (if such he had) to the land in question is not within the knowledge of deponent, but it is not unlikely that the governor, in anger, (which often made him violent in his expressions,) would remind Col. Stark of favors rendered; and as he might deem him unworthy of them, demand a surrender of all that could be got back.

Interrogatory 3d. Do you know what time the said Robert Stark, the elder, left the Spanish government and removed to the United States?

Answer. That the time Colonel Stark left the country deponent cannot remember; it must have been in 1794 or 1795.

*Cross interrogatories.*

Interrogatory 1st. If you know any thing of a grant of land from the Spanish government to Robert Stark, deceased, state particularly how, and from what source you know the same, and what you have related; what do you know from your own knowledge, and what from the information of others, and from whom; did you ever see any Spanish grant from the said Spanish government to the said Stark; if so, of what description was it; a full patent, a warrant of survey executed, and by whom, or how otherwise, and when?

Interrogatory 2d. Do you know that Governor Gayoso ever confined said Stark for not giving up his land; if so, how and from what source do you know the same; who arrested him, and by what process was he so arrested; and from whom have you any such information?

Interrogatory 3d. Do you know that said Colonel Stark was arrested or confined at any time by the Spanish government; and if so, was not the alleged cause against said Stark his putting a white man in the pillory as an alcalde in the district in which he then resided, or for what other cause?

Answer. Deponent, to the 1st, 2d, and 3d cross interrogatories, can only refer to his first answers.

Interrogatory 4th. Do you not know or believe, or been informed by said Stark, or how otherwise, that said Stark abandoned said tract of land, and gave up the same in disgust with the Spanish government of the Natchez district, and have you not heard him curse said government, and swear, or earnestly affirm, that he never would hold any land in it, or under it, and what else, to that effect?

Answer. He has a recollection that Colonel Stark did often speak exceeding intemperately of the existing government, and that he did, perhaps in 1793, leave the country in disgust, and, as was then understood, to return no more, which would no doubt have been adhered to had not a change of government took place. The length of time that has passed since the transactions above stated, and indeed the little interest deponent took in them at the period they took place, makes it ex-

tremely difficult to say any thing positively that can be in any way important.

STATE OF MISSISSIPPI,
*High court of errors and appeals.*

I, Robert A. Patrick, clerk of said court, do hereby certify, that the foregoing sixty-three pages, and the above, contain a true copy of the record of the proceedings and evidence had in the case first therein stated, as fully as the same remains on the records of the supreme court of the State of Mississippi, now in my possession.

Given under my hand and official seal, the 15th of October, A. D. 1838.

[L. S.]

R. A. PATRICK, *Clerk*,
By F. G. HOPKINS, *D'y Clerk*.

STATE OF MISSISSIPPI.

I, William L. Sharkey, chief justice of the high court of errors and appeals of the State aforesaid, do certify, that Robert A. Patrick, whose name is signed to the above certificate, by his deputy, F. G. Hopkins, was at the time of singing the same clerk of the high court of errors and appeals of the State of Mississippi, and that his certificate is in due form.

Given under my hand and seal the 13th day of April, A. D. 1841.

W. L. SHARKEY. [SEAL.]

But the counsel for plaintiffs objected to the reading of the said record to the jury, not objecting to the authentication of it, and the court sustained said objection, and refused to allow said record to be read for any purpose whatever. It was admitted the value of said land was ten thousand dollars, and the counsel for defendants excepted to said ruling of the court, in refusing to allow said record to be read to the jury as evidence, and prayed the court before the jury retired to allow their said two exceptions to be made part of the record, and to sign this their bill of exceptions, and cause the same to be enrolled as a part of the record; all which is done before said jury retired, &c.

S. J. GHOLSON. [SEAL.]

Therefore it is considered by the court, that the said John Doe do recover against the defendants, James A. Stewart, Elizabeth Prosser, Aminta Leatherman, Aurelia Leatherman, John Leatherman, Franklin Leatherman, George Morris, Robert S. Morris, Green B. Morris, and Jefferson M. Morris, his said terms yet to come, of and in the tenements aforesaid respectively, with the appurtenances, and also his said damages by the jurors aforesaid in form aforesaid assessed, and also his costs and charges by him about his suit in this behalf expended; and that a writ of habere facias possessionem issue, directed to the marshal of said district, returnable to the next term of this court.

*Copy of writ of error.—Bond.*

Know all men by these presents, that we, James A. Stewart, Abram

Spanish government, or had uttered language against its officers that had given offence to Governor Gayoso; a demand of withdrawing his claim (if such he had) to the land in question is not within the knowledge of deponent, but it is not unlikely that the governor, in anger, (which often made him violent in his expressions,) would remind Col. Stark of favors rendered; and as he might deem him unworthy of them, demand a surrender of all that could be got back.

Interrogatory 3d. Do you know what time the said Robert Stark, the elder, left the Spanish government and removed to the United States?

Answer. That the time Colonel Stark left the country deponent cannot remember; it must have been in 1794 or 1795.

*Cross interrogatories.*

Interrogatory 1st. If you know any thing of a grant of land from the Spanish government to Robert Stark, deceased, state particularly how, and from what source you know the same, and what you have related; what do you know from your own knowledge, and what from the information of others, and from whom; did you ever see any Spanish grant from the said Spanish government to the said Stark; if so, of what description was it; a full patent, a warrant of survey executed, and by whom, or how otherwise, and when?

Interrogatory 2d. Do you know that Governor Gayoso ever confined said Stark for not giving up his land; if so, how and from what source do you know the same; who arrested him, and by what process was he so arrested; and from whom have you any such information?

Interrogatory 3d. Do you know that said Colonel Stark was arrested or confined at any time by the Spanish government; and if so, was not the alleged cause against said Stark his putting a white man in the pillory as an alcalde in the district in which he then resided, or for what other cause?

Answer. Deponent, to the 1st, 2d, and 3d cross interrogatories, can only refer to his first answers.

Interrogatory 4th. Do you not know or believe, or been informed by said Stark, or how otherwise, that said Stark abandoned said tract of land, and gave up the same in disgust with the Spanish government of the Natchez district, and have you not heard him curse said government, and swear, or earnestly affirm, that he never would hold any land in it, or under it, and what else, to that effect?

Answer. He has a recollection that Colonel Stark did often speak exceeding intemperately of the existing government, and that he did, perhaps in 1793, leave the country in disgust, and, as was then understood, to return no more, which would no doubt have been adhered to had not a change of government took place. The length of time that has passed since the transactions above stated, and indeed the little interest deponent took in them at the period they took place, makes it ex-

tremely difficult to say any thing positively that can be in any way important.

STATE OF MISSISSIPPI,
*High court of errors and appeals.*

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Given under my hand and official seal, the 15th of October, A. D. 1838.

[L. S.]

R. A. PATRICK, *Clerk*,
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S. J. GHOLSON. [SEAL.]

Therefore it is considered by the court, that the said John Doe do recover against the defendants, James A. Stewart, Elizabeth Prosser, Aminta Leatherman, Aurelia Leatherman, John Leatherman, Franklin Leatherman, George Morris, Robert S. Morris, Green B. Morris, and Jefferson M. Morris, his said terms yet to come, of and in the tenements aforesaid respectively, with the appurtenances, and also his said damages by the jurors aforesaid in form aforesaid assessed, and also his costs and charges by him about his suit in this behalf expended; and that a writ of habere facias possessionem issue, directed to the marshal of said district, returnable to the next term of this court.

*Copy of writ of error.—Bond.*

Know all men by these presents, that we, James A. Stewart, Abram

A. Filtus, and T. Jones Stewart, are held and firmly bound unto John Doe, i. e. Philip Hickey, and Anna, his wife, William Wilsoff, sen., and Eliza, his wife, Francis S. Duncan, George Z. Mather, A. M. Tureaud and Aurore, his wife, James Mather, Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather, in the just and full sum of one thousand dollars, lawful money of the United States, to be paid to the said John Doe, i. e. Philip Hickey et al., as aforesaid, their lawful attorney, executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 20th day of May, A. D. one thousand eight hundred and fifty.

The condition of this obligation is such, that whereas at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A. D. 1850, judgment was rendered by said court in favor of the said John Doe i. e. Philip Hickey et al. against the said James A. Stewart et al., for his terms yet to come of and in the tenements mentioned in the declaration therein, and one cent damages and costs of suit; and the said James A. Stewart et al., the defendants therein, have sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said James A. Stewart et al., defendants, &c., as aforesaid, shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises; if they, the said James A. Stewart et al., the defendants in the said judgment, shall fail to make their plea good, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

JAMES A. STEWART, [SEAL.]
*By his attorney in fact, F. Davis.*
A. M. FILTUS, [SEAL.]
*By his attorney in fact, F. Davis.*
T. JONES STEWART, [SEAL.]
*By his attorney in fact, F. Davis.*

Sealed and delivered in presence of—
W. H. BROWN.

I approve of the foregoing bond and securities, May 20, 1850.
S. J. GHOLSON,
*Judge, U. S., D. C., for Miss.*

(*Copy of agreement.*)

The plaintiffs herein will receive the writ of error bond, executed by J. A. Stewart, T. J. Stewart, and A. M. Feltus, and approved by the court as a sufficient bond for all the defendants in this cause.

R. M. GAINES,
GEO. L. POTTER,
JACKSON, 9 *May*, 1850. *Atty's for plaintiffs.*

UNITED STATES OF AMERICA,
*Southern district of Mississippi.*

Circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing one hundred and thirty-three pages contain a full, true, and complete transcript of the record of the judgment in the case therein stated, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of said court, at Jackson, the 12th day of December, A. D. 1850.

W. H. BROWN, *Clk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John Doe, i. e. P. Hickey et al. vs. James A. Stewart et al., a manifest error hath happened, to the great damage of the said James A. Stewart et al., as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of May, in the year of our Lord one [SEAL.] thousand eight hundred and fifty, and of the independence of the United States the 74th.

Issued May 20, A. D. 1850.

W. H. BROWN, *Clk.*

UNITED STATES OF AMERICA, *ss:*

To John Doe, i. e. Philip Hickey and Anna, his wife, William Wilsoff, senr., and Eliza, his wife, Francis S. Duncan, George Z. Mather, A. M. Tureaud and Aurore, his wife, James Mather, Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Mon-

A. Filtus, and T. Jones Stewart, are held and firmly bound unto John Doe, i. e. Philip Hickey, and Anna, his wife, William Wilsoff, sen., and Eliza, his wife, Francis S. Duncan, George Z. Mather, A. M. Tureaud and Aurore, his wife, James Mather, Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather, in the just and full sum of one thousand dollars, lawful money of the United States, to be paid to the said John Doe, i. e. Philip Hickey et al., as aforesaid, their lawful attorney, executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 20th day of May, A. D. one thousand eight hundred and fifty.

The condition of this obligation is such, that whereas at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A. D. 1850, judgment was rendered by said court in favor of the said John Doe i. e. Philip Hickey et al. against the said James A. Stewart et al., for his terms yet to come of and in the tenements mentioned in the declaration therein, and one cent damages and costs of suit; and the said James A. Stewart et al., the defendants therein, have sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said James A. Stewart et al., defendants, &c., as aforesaid, shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises; if they, the said James A. Stewart et al., the defendants in the said judgment, shall fail to make their plea good, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

JAMES A. STEWART, [SEAL.]
*By his attorney in fact, F. Davis.*
A. M. FILTUS, [SEAL.]
*By his attorney in fact, F. Davis.*
T. JONES STEWART, [SEAL.]
*By his attorney in fact, F. Davis.*

Sealed and delivered in presence of—
W. H. BROWN.

I approve of the foregoing bond and securities, May 20, 1850.
S. J. GHOLSON,
*Judge, U. S., D. C., for Miss.*

(*Copy of agreement.*)

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R. M. GAINES,
GEO. L. POTTER,
*Atty's for plaintiffs.*

JACKSON, 9 *May*, 1850.

UNITED STATES OF AMERICA,
*Southern district of Mississippi.*

Circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing one hundred and thirty-three pages contain a full, true, and complete transcript of the record of the judgment in the case therein stated, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at Jackson, the 12th day of December, A. D. 1850.

[L. S.]

W. H. BROWN, *Clk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John Doe, i. e. P. Hickey et al. vs. James A. Stewart et al., a manifest error hath happened, to the great damage of the said James A. Stewart et al., as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of May, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the 74th.

[SEAL.]

Issued May 20, A. D. 1850.

W. H. BROWN, *Cl'k.*

UNITED STATES OF AMERICA, *ss:*

To John Doe, i. e. Philip Hickey and Anna, his wife, William Wilsoff, senr., and Eliza, his wife, Francis S. Duncan, George Z. Mather, A. M. Tureaud and Aurore, his wife, James Mather, Alexander Mather, Charles Mather, Joseph Mather, and Louisa Mather, greeting:

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